



# 2022 European Business Position Paper

**Supporting Sustainable Economic  
Recovery and Competitiveness in Thailand**



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## Message from His Excellency General Prayut Chan-o-cha (Ret.)

### Prime Minister of the Kingdom of Thailand

I am very pleased to extend my congratulations to the European Association for Business and Commerce (EABC) on the launching of its “2022 European Business Position Paper”, which this year, focuses on Supporting Sustainable Economic Recovery and Competitiveness in Thailand.

The launching of this Position Paper comes with apt timing, particularly as Thai and European businesses look forward to stronger relationships in a post-COVID-19 global economy. Given that the EU is Thailand’s fifth largest trading partner and third largest investor, I believe that there is much work to be done in facilitating and fine-tuning our business partnerships in areas such as adapting to the next-normals, the reliability of supply chains, the recovery of the travel and hospitality sectors, and learning from our recent experiences in boosting cooperation on international pandemic mitigation and global medical assistance.

Moreover, the launching of this Position Paper highlights the prominent role of the EABC in promoting a resilient economy in Thailand, and connecting mutually advantageous partnerships between Thai and European businesses. As such, I look forward to the EABC playing a more active role in supporting integrated and seamless connectivity, expanding the digital economy, creating more effective global value chains, and also in supporting the progress of a robust EU-Thailand Free Trade Agreement, which would serve as a fundamental basis for the flourishing of Thai and European business partnerships well into the 21st century. As well, I am very pleased that the EABC is actively supporting the realisation of the Sustainable Development Goals (SDGs) across all sectors, which is an essential component to a post-COVID-19 global recovery and to our efforts in cooperating on climate change and the Bio-Circular-Green Economy Model (BCG) that Thailand is actively promoting for more sustainable, balanced, and inclusive economic and social growth. In light of this potential and the many years of friendship and cooperation between Thai and European businesses, I am confident that the EABC will continue to enjoy a future of progress and prosperity in Thailand.

I take this opportunity, therefore, to thank the EABC members and the European business community for contributing to the Thai economy and to the well-being of Thai citizens. I convey to you my best wishes for your good health and continued success.



General  (Ret.)

(Prayut Chan-o-cha)  
Prime Minister of the Kingdom of Thailand

## Foreword on the EU-Thailand trade relationship

by Mr. Christoph Leitl,  
EUROCHAMBRES President



As the global economy enters the post-pandemic recovery phase, as the European Union it is critical that we ensure the long term recovery of our businesses, and improve the resilience of our supply chains. Global trade will thereby continue to be an essential ingredient, especially as 80% of global growth will take place outside of the EU in the upcoming years and much of it will come from Asia. As such, it only makes sense that we also look to eastwards, particularly to the dynamic markets in the ASEAN region, such as Thailand in order to build stronger economic links post-COVID.

There is no question that the trade relationship with Thailand is already an important element of the EU's trade policy in the region, and European business is already well represented here and making its voice heard such through the important annual position papers of the EABC, including the current edition for 2022.

With official negotiations on an EU-Thailand trade agreement being launched in 2013, it is clear that both sides have long been aware of the economic benefits that a closer economic cooperation between our economies would bring. A look at recent trade figures underlines the mutual beneficial nature of this relationship: In 2020, bilateral trade between Thailand and the EU amounted to €29bn, making the EU the fourth largest trade partner to Thailand, with Thailand exporting €15.1bn worth of goods to the European market in 2020 despite the pandemic. Thailand is equally one of the most important countries when it comes to European investments in the South East Asian region, accounting for €19.8bn in outward stocks – putting the European Union squarely as the second-largest investor in the Thai economy after Japan.

That is why a closer economic partnership with Thailand should be a natural choice for the European Union and Thailand. The East Asian region is set to grow by 7.3% this year alone, followed by 5.3% in 2022, making it an important growth hub for European businesses.<sup>1</sup> In light of these figures, it is welcome news that this year the EU and Thailand have agreed to start resuming negotiations for a free trade agreement.

For European business reducing barriers to trade, as well as cutting red tape and help making the Thai market more accessible for European goods and services should be a priority for EU policy makers. By the same token the Thai business community would stand to benefit as much from increased access to- as well as investment, know-how and cutting edge innovation from the European Union.



<sup>1</sup> World Bank, June 2021: World Economic Prospects.

At a moment where the global community needs to work together to recover from a global pandemic that has hit our economies so hard, we also need to look forward and see how we can tackle pressing global problems, be it climate change or the rapid digitalization of our economies. As such it should be in our natural interest to reinvigorate and strengthen trade relations with like-minded partners across the region to help us achieve those goals better together. Given the need for an inclusive and sustainable global economic recovery, the deepening of ties with Thailand will be highly beneficial for both sides. By facilitating investments and trade through a trade agreement, including in green growth areas, both the EU and Thailand could now lay the groundwork to expedite their green transition by playing to the unique strengths of both sides.

On a geopolitical level too, the Thai and European business communities share many common values and economic perspectives that will facilitate the intensification of our business relations and help strengthen the connection between the European and Thai societies.

Moreover, a strong partnership with Thailand will also be a vital element to further enhance European engagement with the broader ASEAN region. With Thailand representing approximately 17% of ASEAN GDP, it constitutes the second largest player within the bloc. Therefore, shaping and developing common rules in our bilateral economic relationships may very well prove to be a key stepping stone towards a future bi-regional EU-ASEAN trade agreement. Therefore, it is my firm belief as President of EUROCHAMBRES, that by deepening our economic ties we will also achieve better cooperation in the political sphere, as strong economic ties will give us the necessary incentives to deepen our engagement on a wider arrange of socio-economic issues that are of importance to our respective societies.

That is why the cooperation with important partners in the country, such as the EABC, as well as the engagement with the broader stakeholder community in Europe and Thailand will be necessary to meet the expectations of our businesses and citizens as we reinvigorate our economic ties in the upcoming years.

Mr. Christoph Leitl,  
EUROCHAMBRES Honorary President,  
former President (2002-2005, 2018-2021)



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## Message from Thailand-Europe Business Council (TERBC)

### By Mr. Chaiwat Kovavisarach Chairman of Thailand-Europe Business Council (TERBC)

As the chairman of the Thailand-Europe Business Council (TERBC), I am pleased to congratulate the European Association for Business and Commerce (EABC) on the publication of the European Position Paper 2022. It is an excellent demonstration of the expertise, knowledge, and collaboration that sits at the core of the work between the two organizations and other working groups thus far.

The relationship between the TERBC and EABC, while young, has been extremely fruitful. Since its establishment by the Joint Standing Committee on Commerce, Industry, and Banking (JSCCIB) in 2020, the TERBC has aimed to counteract trade blocks and economic sanctions, promoting trade and investment as well as foster a close level of cooperation between entities in the private sector. The EABC has been central to these efforts.

Both the TERBC and EABC aim to promote a sustainable economic recovery and prosperity between both partners, encouraging trade between Thailand and all European countries, from Turkey to Great Britain. Recent meetings over the past few years have enabled us to put a framework of cooperation into place, encouraging companies to seek new business opportunities.

A commitment to the renegotiation of the EU-Thailand Free Trade Agreement (FTA) from the TERBC and the EABC is one such example of the fine collaboration between both parties. The FTA would bring immense gains to both European and Thai entities, as European businesses benefit from a new destination of investment and Thailand's supply chains would be improved by new waves of high-tech investment.

Additionally, both parties have agreed on climate strategies to improve the business sector's environmental footprint and aid Thailand's vision of becoming carbon neutral in 2050 and reaching net zero emissions by 2065. Other endeavours include the TERBC's contribution towards reforming key obstacles to partnership, such as the Work Permit & Visa and the Foreign Business Act.

Given the equal and constructive exchange of knowledge, technology, and policy feedback between the TERBC and EABC, it is clear that relationships like these are central to propelling Thailand forward for future generations. As an organization that has, from its genesis, facilitated greater collaboration between Thai and European businesses, the TERBC only hopes to continue promoting trade between and among countries moving forward.

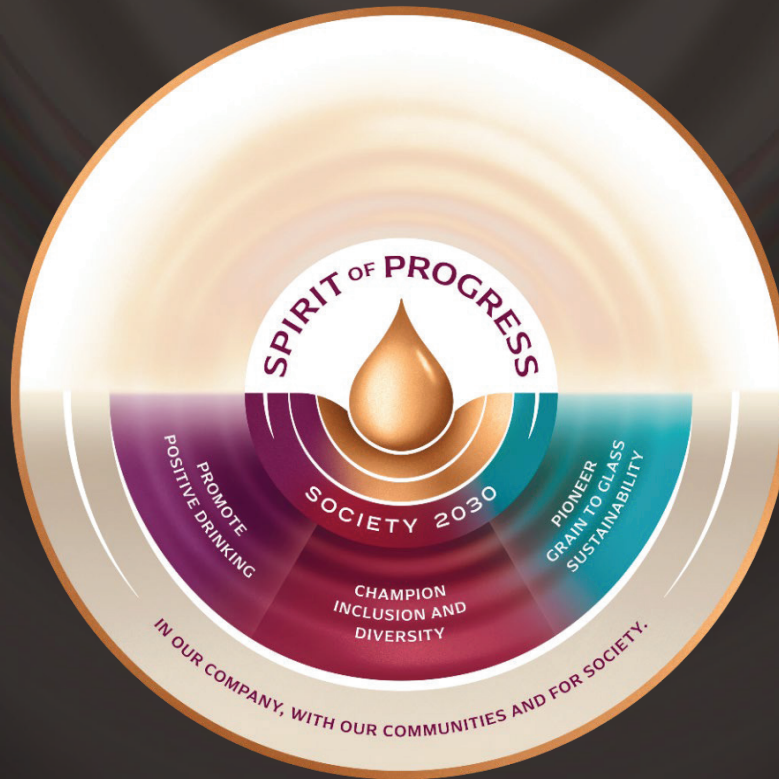
We look forward to sustaining and strengthening the partnership between the EABC and the TERBC, as well as between all European businesses and Thai businesses, in the years to come.

Chaiwat Kovavisarach  
Chairman of Thailand-Europe Business Council (TERBC)



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## Message from the President

Bangkok, January 2022

The European Association for Business and Commerce (EABC), is known as the European Chamber of Commerce Thailand. EABC's scope is to cover the EEA – European Economic Area (which essentially includes EU member states and others), Switzerland and the UK. EABC contributes towards the improvement of trade & investment in and with Thailand and fostering business co-operation between Europe and Thailand. Our activities at their core are about advocacy which includes several modes of engagement: dialogues, public hearing participation; seminars, small group meetings, building consensus amongst our constituents, providing support to European businesses in trade and investment, and organizing key events to foster opportunities for European businesses in Thailand.

Throughout its history, EABC has published the European Business Position Paper approximately bi-annually. This publication represents insights into relevant issues for European business in Thailand and European–Thailand trade and investment, based on research, direct experience, knowhow and the learning through dialogue and other ways of engaging with many officials of the Royal Thai Government, trade organisations and others.

The 2022 European Business Position Paper encompasses key recommendations of the twelve EABC Working Groups and other issues outside the scope of those Working Groups but within EABCs remit. The recommendations are for the Royal Thai government from the European business community in Thailand. We believe that it contributes to strengthening Thailand's competitiveness and to enhancing its regulatory framework, creating an improved business-conducive environment, enhancing skills and attracting Foreign Direct Investment. The publication embraces a whole-of-economy view through an Introduction and sector-specific as well as cross sectoral chapters. A structured, searchable PDF version is also available.

Despite the pandemic (and to some extent because of it), many legislative and policy developments have occurred since EABC's 2019–2021 publication. The 2022 European Business Position Paper under the theme "Supporting Sustainable Economic Recovery and Competitiveness in Thailand" reflects on the ongoing pandemic and the prospect of a greener, upskilled and more competitive Thailand. A robust EU-Thailand FTA would be one important element contributing to long term economic enhancement for Thailand and Europe, and supports effecting necessary reforms. EABC has been involved as the central focal point for collecting and collating requirements and recommendations from the European business community on a EU-Thailand FTA. We also keep abreast of a future EFTA-Thailand FTA and a UK-Thailand agreement.

On behalf of EABC, I would like to thank our Board, the Working Groups Chairs and their members, and our EABC office for their work on this publication. My sincere thanks also go to the Royal Thai Government, EBO Worldwide Network, the Royal Thai Embassy in Brussels, EUROCHAMBRES, Thailand-Europe Business Council, EU ASEAN Business Council, the European Union Delegation to Thailand, our current members, partners and sponsors in support of the 2022 European Business Position Paper.



Yours sincerely,  
Jan Eriksson

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## Executive Summary

The issues identified in this 2022 European Business Position Paper and their Recommendations are the product of sector experience and understanding, consultation, dialogue with government, research and consensus-building. EABC (which acts as 'Eurocham Thailand') is not a lobby group protecting and defending existing investments and positions. Rather, the main focus is on European-Thai trade and investment, where recommendations support an enhanced, competitive and sustainable economy where Thailand is more attractive for investment and as a trading partner; embraces various reforms and developments. The role of European business and Europe policy and regulation is covered in the Introduction chapter.

After the severe economic downturn of 2020, uplift for 2021 was modest. Free and fair trade, innovation, upskilling, being greener and underpinned by a rules-based world trade order and best practices, remains the main path to Thailand's competitiveness and sustainable economic recovery.

Special attention should also be paid to the implementation of Thailand's policy and legislative measures to ensure that the reforms contribute to the establishment of a level-playing field, to the functioning of the rule of law as well as to unleash the potential of the Thai economy. Competitiveness and resilience require more than temporary trade promotion; safeguarding and ensuring the success of existing industries, and also supporting policy and legislative reforms agenda. Real strengthening comes from enhancing ease of doing business, reducing corruption, efficient logistics, policies in support of innovation and upskilling, Rule of Law, and productivity enhancements.

In these exceptional times, many challenges lie ahead of us, while the World is grappling with responses and seeking ways to get out of the crisis, including Thailand, a robust EU-Thailand Free Trade Agreement would be one important element as a route in the medium and longer term to economic recovery for both Thailand and Europe and support effecting necessary reforms.

Recurrent themes in the 2022 European Business Position paper include:

- Competitiveness, liberalisation of services; reform
- Removing clutter and out-dated rules by fast-track regulatory reform; ease of doing business
- Improved, balanced and non-discriminatory market access to Thailand
- Achieving inclusive and sustainable growth, including responsible business conduct, environmental conservation, integration of Sustainable Development Goals, Bio-Circulate-Green (BCG) and recognising the principles of the European Green Deal

- Promoting businesses role in achieving carbon neutrality by 2050 and net zero emissions by a similar date
- Skills and capacity building; education refocus on essential skills such as critical thinking, digital literacy, collaboration towards the Thailand 4.0 vision.
- Digitalisation, innovation, supporting SMEs
- Rule of Law; Support for a rules-based world trading order and removing trade frictions; Anti-Corruption

## ISSUES AND RECOMMENDATIONS

### Introduction

The Introduction Chapter provides useful background information to the Position Paper both from the perspective of the Thai economy, the relevance of European business and EU policy and regulation, and explains EABC's approach.

#### 1. The Thai Economy

- GDP ; Tourism; Exports
- Labour force
- Dependencies
- Drivers to recovery
- Necessary reforms for Economic Recovery

#### 2. Rankings

- World Bank on Ease of Doing Business had gaps, has ceased
- Look to other rankings such competitiveness etc rankings.

#### 3. European business; EABC Advocacy

- Value of European business at its best
- EABCs advocacy approach builds consensus and draws in broadly

#### 4. Policy, Law and Regulation

- Influence, relevance and application of EU policy, law and regulation
- Background on EU law types, Thai law types, ASEAN sources of law

## ISSUES AND RECOMMENDATIONS

### Introduction

#### 5. Europe : Thailand Partnership

- Europe-Thailand
- An EU-Thailand FTA
- EFTA
- RCEP relevance
- CP TPP relevance
- Thailand – UK

#### 6. Income gap and wealth gap are widening and have a negative economic impact

- Understanding the Income gap
- The Wealth gap
- Existing gaps
- Intergenerational
- COVID 19 impact
- What could be done about the gaps

### Automotive

#### 1. Trade and EU - Thailand FTA Negotiations

- Reaffirming our position in the 2019/20 European Business Position Paper, EABC & TEBA continue to support any possible development towards an EU - Thailand FTA. We encourage Thailand to strongly reaffirm its interest in the FTA and explore ways to re-engage in the negotiations.
- Taxation should not be the only benefits of the EU - Thailand FTA. Thailand should also focus on reducing, eliminating, and preventing non-tariff barriers.
- Develop the benchmarking report comparing with other FTA such as EU-Vietnam, Thai-EU and Thai-EFTA and use as the guideline for the EU-TH which will be resumed.

## ISSUES AND RECOMMENDATIONS

### Automotive

#### 2. Technical Regulations

- Emission & Fuel and Road Safety
  - It is recommended that Thailand implements the WP29 - 1958 Agreement by adopting UN Regulations and recognizing type approval certificates and test reports issued in accordance with UN Regulations to enhance safety and foster the auto industry's competitiveness, with priority to facilitate export performance.
  - We urge Thailand to continue its active engagement in further development of the ASEAN MRA, which should provide recognition of UN Regulation. An acceleration of the ASEAN MRA timeline is highly encouraged.
  - The product certification for automotive products should be simplified, transparent and open for full acceptance of relevant international certificates and document without additional testing and inspection, as well as allow the transfer of test report and license among affiliated companies.
- Emission & Fuel
  - Align advanced emission standards with fuel quality improvement nationwide from 2024 for new vehicles.
  - Accelerate enforcement of advanced emission standards to bring ultimate value of automotive industry to low emission's purpose, with recertification facilitation regulations.
  - The exhaust emission standards must be in line with fuel standards for the efficiency of engine to generate lesser toxic emission; interdependencies between emission standards and biodiesel policy should be underlined e.g. compliance of low sulfur fuel (max 10 ppm) would be considered to avoid potential technical impacts of higher biodiesel blending (B7 and above).
  - The actual exhaust emissions of in-use Diesel 1-ton Pickup Trucks and Commercial Vehicles (3.5-ton and above) should be more stringently measured the Periodic Technical Inspection (PTI). Compliance with the respective exhaust emission levels shall be more strictly enforces since they are the most polluting vehicles. All modifications to the vehicles original exhaust system shall lead to non-compliance.
  - Adoption of a requirement for an earlier Periodic Technical Inspection (PTI) for in-use Diesel 1-ton Pickup Trucks and Commercial Vehicles (3.5-ton and above) starting from e.g. 3rd year of registration. This would also discover possible illegal modifications of the ECU parameter or exhaust cleaning system
  - Apply increasing rate of annual vehicle registration tax per year of vehicle age for Commercial Vehicles (3.5-ton and above) as a penalty for operating an older vehicle (starting from the 3rd year of registration).



## ISSUES AND RECOMMENDATIONS

### Automotive

- Road Safety
  - It is recommended that the Thai government investigate making a variety of vehicle safety measures mandatory. Most notably we recommend investigating possible ABS requirement for power 2-wheelers (No limited for engine cc.), eCall mandatory and 15 new safety features regulation given the fact that these are standard in several vehicles already today, and these technologies can support to reduce human errors to mitigate road accident in Thailand.
  - Thai government to consider putting roadmap to harmonize national with international automotive standards (UN regulations).
  - Propose to the Expressway Authority of Thailand to allow the Big Bike to use the Express Way.
  - Adoption of a requirement for an earlier Periodic Technical Inspection (PTI) for all vehicles, starting from e.g. 3rd year of registration. This would also identify illegal modifications that could influence the road safety of the vehicle.

### 3. Taxation

- Encourage the relevant authorities i.e. Customs Department, Office of Industrial Economics, Thailand Automotive Institute, to adopt a simple and flexible 'Essential Manufacturing Process' requirements, particularly for the EV industry. Manufacturers shall have the flexibility to choose, for the production of PHEV and BEV, any EV component (e.g. other than HVB, traction motor, BMS, DCU), as well as the suitable production processes to install in Thailand.
- Continue to encourage clear and transparent rules, as well as the provision of sufficient lead-time. This is to strengthen Thailand's ease of doing business and create a business environment conducive to investment in new technology.
- Emphasize the importance of PHEV as a bridging technology that supports the drive towards electro-mobility and encourages that excise tax rates on PHEV shall be maintained at a low level.
- Discourage any excise criteria that may lead to difference in the vehicle specification (such as size of fuel tank) between that in Thailand and that in European or international markets.
- Discourage the setting up of an EV battery fund that would add any financial burden to the sale of EV.
- Encourage the Government to review the VAT calculation for the sale of used vehicle.
- Encourage the Government to raise the ceiling of the deductible expense when buying the vehicles.

## ISSUES AND RECOMMENDATIONS

### Automotive

#### 4. Labour

- 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

- It is recommended that the Royal Thai Government ensures the transparency and monitors the effectiveness of the licensing grant process.
- Safeguarding existing investments requires long-term support and true commitment from BOI, and clarity to investment promotion is required to avoid unnecessary delay to investment decisions.
- BOI as business facilitation center, should be consistent in relevant regulations and encourages the ease of investment climate as well as strong confidence towards investors.
- Thailand should continue to raise standards for safety and environmental requirements in the automotive sector to help attract green technology and new investments.
- We recommend the government continues dialogue with TEBA automotive working group about improving ease of doing businesses and consist of industry experts that can provide policy recommendations to boost Thailand's competitiveness.

#### 6. Electrification

- Infrastructures Development
  - Develop public charging ecosystem with a clear roadmap and target.
  - Incentivize and facilitate the installation of private charging infrastructure.
  - Require new buildings, both residential and commercial, to install charging infrastructure.
  - Maintain long-term low electricity cost for charging stations.
- Demand Stimulation
  - Create awareness to instil a sense of exclusivity for electric vehicle users.
  - Replace government's fixed-route fleets to electric vehicles.
  - Create monetary incentives for private users and corporate fleets to offset high technology cost.
  - Create non-monetary incentives for electric vehicle users e.g. toll free, parking free, dedicated EV zones.

## ISSUES AND RECOMMENDATIONS

### Automotive

- Supply Incentives
  - Incentivize chargeable electric vehicles, connecting with local manufacturing in long term e.g. excise tax privileges.
  - Develop EV supply chain with value added investment of local content to attract suppliers of key components.
  - Simplify regulations or conditions impeding investment to attract more players to continue investing locally and maintain local industry competitiveness.
- Standards and Regulations
  - Implementation and acceptance of UN-R100 without addition of local adaptations.
  - Accelerate the facilitation of future mobility for local homologation activities e.g. vehicle testing, certification, which would practically save time and cost.
  - Proactive participation to related regional automotive committees e.g. AAC to demonstrate Thailand's leadership in the industry including the aspect of EV regulations.
- Human Resource Development
  - Enhance skilled technicians to competently cope with the future mobility industry.
  - Incentivize public-private collaboration on curriculum for advanced technology of EV and battery as well as promote technology know-how transfer activities.
  - Enhance competency of specialized authority to efficiently handle the advanced technology, testing and standards.

### Cross Sectoral Issues (CSI)

#### 1. Tax Regime – Competitive, Efficient, Inclusive and Fair (15 items, 4 here)

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

## ISSUES AND RECOMMENDATIONS

### Cross Sectoral Issues (CSI)

#### 2. Foreign Investment (3 Items)

- Take a bold approach to List 3 of the FBA and reform the List 3 decision-making process
- Review other consequential legislation impacting allowing foreigners to do certain jobs
- Maintain FBA standard

#### 3. The Legal System (7 items; 6 here)

- Promote 'Rule of Law'
- Law Making and the Consultation Process need better practices
- Court reporting enhancement; Court processes to be more digital
- Arbitration should be available for all categories of government contracts
- Fast Track Regulatory Reform – implement the changes from the Guillotine phase.
- Inappropriate laws should be removed.

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

- For Business Visitors – change 'work' definition to make it in line with APEC business mobility principles and use the RCEP Business Visitor concept, allow a wide range of activity with no work permit.
- For those living and working in Thailand, a range of specific changes is needed
- For smart visa, make it less cumbersome and more attractive.
- Ultimately remove TM.30 (any remaining parts to be done on-line); TM.6 via on-line where needed or eliminate; 90 day reporting only for change of residence.
- ILO standards need to be respected, action is needed.

#### 5. Anti Corruption (3 items)

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

#### 6. Sustainability (3 items)

- Make education about the inherent business value of sustainability better understood
- Sustainability integration is needed; built-in, not bolted on in all areas of economic activity
- Recognise global influences in sustainability and harmonise

## ISSUES AND RECOMMENDATIONS

### Digital Economy / ICT

The Digital Economy operates in three layers. A well-regulated telecoms sector best serves the digital economy. Digitalisation needs to occur in all parts.

#### 1. Infrastructure

- Industry reform including wholesale and SOE reform
- An holistic plan for national broadband infrastructure
- Liberalising international gateways fully
- Spectrum plan and economic-based pricing; avoid artificial scarcity
- 5G: the need to support use cases and infrastructure sharing
- MVNO policy to support innovation
- Cease the Foreign Dominance Notification
- Telecom merger must result in a competitive market.

#### 2. Operating and Support Systems, Digital Governance

- Promote Trusted Internet by MSM governance models.
- Cybersecurity – MSM principles and state accountability
- Data Privacy – review subsidiary legislation not yet released as at January 2022
- Digital Government – a visible, workable strategy for whole-of-government
- Fake News – primary tool is education; avoid government being arbiter of truth; a policy for negative on-line comments
- Skills development is a multi-pronged plan; Digital Literacy essential
- Procurement and Anti-Corruption – enhancements and positive steps to be built on

#### 3. Applications and Digital Services

- Platforms – resolution of issues of scope, presence and control
- Large volume of regulation – ensure it works inharmony.
- Enhanced support for Fintech and Start-Ups
- Clearing roadblocks with eCommerce registration and making it attractive.
- eCommerce Tax clarity needed
- Digital Vaccine certificates will develop further.

## ISSUES AND RECOMMENDATIONS

### Energy

**1. Greater reliance on renewables** is needed under power plans. Inevitably there will be greater reliance on LNG at least for a period however but alternatives will be increasingly attractive.

#### **2. Electricity Generation**

- Amount of electricity generated (capacity vs. peak demand): Given that Thailand's electricity consumption will grow, additional capacity will need to come online
- The global energy transition will likely involve a greater dependence on electrification of other sectors, such as transport, manufacturing, heating and cooling, etc. Thailand is no exception, and Thailand's electricity demands will certainly continue to rise.

#### **3. Greenhouse Gas Targets and Other Measures**

- A more ambitious agenda and concrete steps to facilitate the energy transition represent a major economic opportunity and would also improve Thailand's standing as a regional leader.
- Carbon pricing: Care must be taken to ensure carbon pricing policies are implemented in a responsible manner, taking into account the views and interests of all stakeholders.
- European Green Deal, CBAM: Compatible policies are encouraged.
- Thailand needs to be aware of the CBAM and similar policies in other jurisdictions and plan accordingly. Continuing to rely on carbon intensive fuels to generate electricity could put Thai industries at a competitive disadvantage if the CBAM and similar policies are implemented.

#### **4. Areas for Further Development**

- Supporting energy transition: Some initiatives will require governmental fiscal support, which is obviously complex and requires a complete understanding of public finances which is beyond the scope of this position paper. However, many policies present minimal costs to the treasury but could have an outsized impact on reducing carbon emissions.

## ISSUES AND RECOMMENDATIONS

### Energy

- Increasing solar deployment: appropriately tailored policies to promote rooftop solar should be devised to improve penetration in the residential market and commercial properties in city centres.
- Carbon Capture, Utilization and Storage: An alternative policy tool could be utilizing tax incentives through the BOI to encourage utilization of BECCs.
- Green hydrogen production: Thai government should enact clear guidelines to provide investors certainty with how the market will be regulated positively.
- EVs and EV infrastructure: MEA and PEA could take the lead in rolling out charging infrastructure. Alternatively, a licensing regime could be established to permit private parties the ability to develop the necessary charging infrastructure.
- Alternative storage: The National Energy Plan should plan for greater use of energy storage coupled with solar to realize a speedier transition from fossil fuels.
- Unlocking rooftop solar in the residential sector: The government should explore ways to encourage financing in this sector, such as by offering tax credits to homeowners and/or credit default insurance schemes to stimulate private finance.

### Food and Beverages

Hospitality sector creates thousands of direct and indirect jobs, we firmly support the Royal Thai Government's plan to maintain and build its leadership in the world food and beverages industry, together with transforming Thailand into the world's leading premium and safe tourism destination.

#### 1. Beverages

- Revisit restrictive alcohol control laws such as e-commerce ban, the ban on consumption between 14.00-17.00hrs, etc. to encourage hospitality.
- Consider introducing a public-private 'Hospitality Working Group' to drive long-term economic growth in the sector, with the collaboration of responsible government agencies.
- Apply a collaborative approach to reduce alcohol-related harm through evidence-based, targeted education campaigns to reduce harms, especially, underage drinking, drink driving, binge drinking.
- Restructure excise taxation to create a more sustainable revenue stream for the Government, while supporting hospitality and tourism.
- Optimize import duties on imported wines and spirits products which will attract high yield tourists, help reduce incentives for illicit alcohol trade and increase overall revenue.

## ISSUES AND RECOMMENDATIONS

### Food and Beverages

#### 2. Food

- To achieve the goal of Thailand's food industry, further policies and actions are urgently required for more sustainable and effective plans for economic recovery in food industry of Thailand.
- Revised the Foreign Business Act - Not prohibit foreigners from carrying out 39 professions in which 8 of the 39 have been identified as of interest including in Food & Agricultural industry.
- Fast Track Regulatory Reform – Allow the Product approval & registration processes process in documentation and to be less complicated / reduce the red tape in the operations in food industry
- To achieve food security, Thailand will need to comply with international standards and practices to lift up the quality and effectiveness in production of agricultural products and processed food.
- EU FTA – most tariffs barriers will be eliminated and minimized so as to facilitate trade and business activities to be done more easily with less unnecessary costs of production along the way from the production to the destination abroad. It will also help reduce and maintain the prices of foods and agricultural products to be more affordable and accessible for consumers.
- RCEP – can solve problems of food trade and production by minimizing protectionist policies like tariffs on agricultural products which also helps reduce the cost of production in food industry, as well as setting single-standard rules of origin including certificate of origin for products from all markets.
- European Green Deals – Ensure that Thai businesses and Food industry comply with international standards, especially the European Green deals, from production to exportation to EU countries to facilitate the flow of food trade and
- Future Food trend – enhancing and upgrading the agriculture industry to adopt new technologies and encourage new FDIs and foreign know-how to ensure the industry keeps up with global trends/competitions and remains sustainable for the future.

### Healthcare and Pharmaceuticals

#### 1. Sustainable economic recovery with healthy manpower and sustainable financing

- Exploring solutions to enhance patient access including alternative access models, innovative and value-based financing models, as well as incentivising self-care policy as contributing solution to promote sustainable healthcare financing, access, and budget management.
- Establishment of Risk-sharing or Manage-Entry Agreement through Regulatory Sandbox as an alternative solution for sustainable healthcare financing post-COVID recovery.



## ISSUES AND RECOMMENDATIONS

### Healthcare and Pharmaceuticals

#### 2. Innovation to boost competitiveness and economic growth

- Aligning the amended Patent Law with international standards and practices enabling efficient registration and protection for increased technology transfer and investment.
- Recommendation to increase number of competent patent examiners in particular in the fields of chemical, device and pharmaceutical researches to speed up review process.
- Adopting patent term restoration and data exclusivity to create a holistic framework enticing innovation in long term
- Amending the inclusion criteria to the innovation list to include international innovators to reap full benefits and position Thailand as an innovation hub.

#### 3. Digital Health as growth driver opportunities and patient care enhancement in the new normalcy

- Establishment of regulatory framework to enable legalized e-pharmacy and facilitate patient care, drug dispensing and delivery remotely
- Enabling new regulatory frameworks to improve and facilitate access to new technologies i.e. 3D printing medical devices.

#### 4. Promoting Ease of Doing Business to attract sustainable health investment

- Improve regulatory efficiency through encouragement of regulatory framework and requirements according to risk-based approach including simplified registration for self-care medicines
- Continued dialogue between the Royal Thai Government and stakeholders in the sub-regulation development under regulatory reform for medical devices
- Transparent procedures for healthcare and pharmaceutical products pricing and reimbursement, with due consideration for the value of innovation to therapeutic outcomes and clinical needs rather than purely cost saving.
- Level playing field in government procurement, removing local and government preferential treatment.
- Further liberalization of the Trade Competition Law to enable trade and investment.

## ISSUES AND RECOMMENDATIONS

### Industry

#### 1. Role of industry in Thai Economy

- Industrial sector is one of the major engines to drive Thailand's economy. While the world is in an 'Industry 4.0 or IR 4.0' state of development, for Thailand this largely means the 'Thailand 4.0 vision' with all the necessary business transformation needed.
- Post-COVID-19 growth rates will depend on how deep the eventual downturn is in 2022 and how well-equipped Thailand is to support economic recovery through FDI and other measures.
- Thailand's manufactured exports were driven by the low production cost of labor-intensive products. But low cost of production is only a temporary source of competitive advantage as this advantage can be eroded by increases in wages.
- These points play into the importance of developing an innovative and attractive sector.

#### 2. EU FTA and its impact on manufacturing sectors

- An EU-Thailand FTA can potentially lead both EU and Thailand towards similar growth in terms of export values and GDP.
- The proposed FTA should be perceived to be more than a trade facilitation arrangement – i.e. to unlock liberalization, market access and necessary reforms for ease of doing business. Estimation of 5% uplift to GDP through service sector liberalisation.
- An EU-Thailand FTA is expected to be a deal of a high standard which would cover broader and deeper new trade issues, such as environmental and labor protection and responsible business conduct. Also, alleviation of regulatory requirements.

#### 3. Sustainable Supply Chains

- The role of the industrial sector to reduce greenhouse gas emissions towards sustainable industrial development is essential.

#### 4. Promotion of Industry

- Various Incentives through Government promoted BOI, IEAT and EEC.

## ISSUES AND RECOMMENDATIONS

### Industry

#### 5. Ease of doing business/Doing Business Easily

- EABC sees foreign participation in public procurement as positive. But to protect SMEs for some time, specific deferrals are possible.
- Legislative improvement concerning business practices needed to be revised to enhance transparency, predictability and ease of doing business in Thailand including through digitalisation.

#### 6. The important role of Engineering in the context of Industry and Thailand 4.0

- The transformation to Industry 4.0 will replace repetitive and routine jobs with robotics and automation, and new skills need to be developed to better support non-routine / task oriented / Project base activities.
- Restrictions on participation in engineering appear in the Foreign Business Act, the April 2020 Notification restricting 39 Professions (which replaced a 1979 Decree) and at a professional membership level, the Engineers Act. Particular disciplines in engineering are more regulated than others; review and reform is needed to ensure the right skills are available.

#### 7. Inadequately skilled workforce

- Call for the Thai Government to consider developing plans for the mid- and long-term to provide a sufficient workforce of qualified graduates to match industry requirements as well as incentives for education, are commendable.

#### 8. Inadequate infrastructure and plans to overcome

- High-speed train, deep sea ports are the chief facilities linking an economic system with the international market and therefore the main trade hubs in accordance the Thai government's policies to promote the country as a regional logistics hub.

#### 9. Rule of Law; law making - Public Consultation

- Effective consultation is a key part of achieving well-supported laws and regulations which applies to this sector as others.

## ISSUES AND RECOMMENDATIONS

### Insurance

#### 1. Liberalisation of insurance industry

- Key areas of liberalization.
- Major principles of a liberalised insurance market.

#### 2. Enhancing the development and competitiveness of 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. Amending existing intellectual property laws and practice to improve and streamline IPR registration procedures

- Comments on proposed amendments to the Thai Patent Act B.E. 2522
  - Patent Opposition System
  - Compulsory licensing
  - Divisional Applications
- Comments on Trademark Examination Practices
  - Formality Objections
  - Distinctiveness
  - Fast Track Procedures
- Geographical Indications

## ISSUES AND RECOMMENDATIONS

### Intellectual Property Rights

#### 2. Improving IP protection framework and enforcement both online and offline

- Draft amendments to Thai Copyright Act
  - Extension of the Term of Protection for Photographic Works
  - Notice-and-Takedown System
  - Intermediary Service Providers (ISPs) and Safe Harbours
  - Fair Use
  - Technological Protection Measures
- Intellectual Property Infringements
  - The Impact of COVID-19
  - Counterfeit Goods: the case of cigarettes and alcohol
  - IPR Infringement on Digital Platforms
    - MOU on Cooperation for Suppression and Prevention of Online IPR Infringement
    - Roles of Intermediary Service Providers
    - Holistic Approach to Tackle Counterfeiting
    - Relevance to IPRs of Malware/Ransomware attacks

#### 3. Thailand Role as a Regional Hub for IP

### Rail and Road Infrastructure

1. Special Envoy for Economic Recovery through Transport Infrastructure Investments.
2. Approvals from Ministry of Transport for Infrastructural Products and Systems.
3. Implement Know-How submitted by European Institutions and Countries.
4. Consider modern technologies in design and procurement, evaluate TOTEX.
5. Evaluation of Infrastructural Projects by International experienced Experts.
6. Realize benefits by liberalization and international co-operation.
7. Modernize Road Traffic Control.

## ISSUES AND RECOMMENDATIONS

### Tourism

#### 1. Concept of the tourism industry

- In pre-pandemic Thailand, the industry made up almost 20% of GDP. A common belief is that Thailand must regain leadership in tourism but it needs to be greener. Further the pandemic has gutted skills and organisational learning; reskilling is essential.

#### 2. Thailand as an attractive destination for Tourism

- A wider view about hospitality-led recovery – which includes domestic and international tourism and even in-town spend is essential for economic recovery of Thailand.

#### 3. Significance of Tourism to Thai Economy

- The tourism industry has been seen as a tool for “Solving poverty” and “raising the economy of country” as it involve various dimensions which included formal and informal sectors.

#### 4. Pandemic impact on tourism; Tourism as key toward sustainable economic recovery

- Impacts on Tour operators: allowing foreign tour facilitators is to enhance the tourist experience by having a person with some local knowledge and speaking the same language and appreciating the culture of the foreign tourists in that group.

#### 5. Sustainable Tourism

- With increasing tourist numbers there is a need to protect and promote the sustainability of Thailand along green line in order to pave the Way for a More Sustainable & Inclusive Future, reflects the increasing focus on ensuring the industry’s sustained growth.
- EABC continues to work with JFCCT for commendable development towards more sustainable tourism in accordance with the CAP Project and beyond.

#### 6. Digitalisation

- PDPA, eCommerce Tax, Digital Platforms Governance Decree and Immigration Administration and features are backbone to the digitalization and improvement of tourist experiences.
- Social media and influence marketing: EABC encourages truth in advertising. Over promotion will only disappoint.

## ISSUES AND RECOMMENDATIONS

### Tourism

#### 7. Fair price competition in the hotel industry & Transportation

- EABC recommends solution stricter implementation of existing regulation plus the creation for better and clearer rules and regulations for non-hotels. 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.

#### 8. Luxury Goods

- EABC recommends that this import duty rate be reduced significantly as soon as possible.

#### 9. Aviation

- It is in our common interest to promote the urgency of swift action to further liberalize the air travel industry. Pursuing a Single Aviation Market is recommended.

#### 10. Future of Tourism in Thailand

- Reskilling is essential in order to deliver on expectations, and for economic recover. It needs a workable and manageable curriculum plan.
- The Thai economy relies heavily on tourism, so its recovery will drive economic revival. Therefore, a review and update of the Strategic framework for Ministry of Tourism with comprehensive requirement is paramount. is paramount.

### SME

50% of EABC members are SMEs, they number 99% of the economies of Europe and of Thailand. All EABC Working Groups cover SME, this chapter has issues and recommendations to SMEs.

#### 1. What are SMEs

- Definitions of MSME and profile show great dependency of the economy on SMEs. 99% in number of enterprises in the economy in both Thailand and Europe. Both Thaliand and Europe have support policies and structure.

#### 2. Problems facing SMEs

- May be similar to those of larger companies but are more acute.
- List of problems shows they are exacerbated by the pandemic.

## ISSUES AND RECOMMENDATIONS

### SME

#### 3. Addressing the challenges

- Support innovation, R&D
- Recognise foreign SMEs
- Various measures to support access to finance
- Learn from the pandemic – support measures in 2020, 2021, looking to 2022

#### 4. Regional context

- EABC supports and welcomes inbound SME startups and investment, especially from Europe and is able to facilitate.
- EABC encourages outbound expansion
- ASEAN regional strategies can be supportive

#### 5. Recommendations (10, four in this summary)

- Internationalisation
- Innovation, productivity
- Funding Support including credit guarantee
- Fast Track Regulatory Reform – remove the clutter

#### 6. EABC

- EABC is equipped to support SMEs via Working Groups, other forums, direct engagement and its networks

### Transport & Logistics

#### 1. Thailand as logistic destination

- Given that Thailand is a heavily export-dependent country, the importance of the logistics industry can never be overstated.
- RCEP - a key to unlock tariff savings and a path towards the deep integration of regional supply chains and industrial chains; tremendous opportunity to expand trade with other RCEP members which contributes to about 53% of Thai export market.



## ISSUES AND RECOMMENDATIONS

### Transport & Logistics

#### 2. Long term goals for customs facilitation

- Legal Framework: 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.
- Reasonable Care Concept: 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.
- Reward and penalty system: EABC welcome the news that Customs will set up a Working Group to study reward and penalty systems to ensure the elimination of conflicts of interest. We urged that there should be a clear plan and timeline toward the elimination of the reward and penalty system.
- Goods in transit and ACTS: In order to enhance Thailand as a Regional Logistics Hub, Goods in International and Goods being transported within Thailand between Thai Customs offices under Customs Bond transit will have to be liberalized to the level of international best practice, but the steps to be taken will differ.
- Digitalization in customs and document compliance: In order to achieve a paperless environment, there is a need for further cooperation among related parties to promote the practices especially at each customs house and check point.

#### 3. Individual measures in customs and trade facilitation reforms

- Time allows for goods to be remained in the bonded warehouse: The EABC recommend that Customs extend this period to one year to match the period to be allowed for Bonded facilities in general.

#### 4. 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 materialize as long as Foreign investors are restricted to minority holdings.

#### 5. IP Customs Enforcement in Thailand

## 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
APMRA	ASEAN Mutual Recognition Arrangement on Type Approval for Automotive Products
ASEAN	Association of Southeast Asian Nations
BEV	Battery Electric Vehicle
BSA	Business Software Alliance
CAP	Certificate of Approval for Protection
CBI	Confidential Business Information
CBU	Completely Built Up
CEA	Comité Européen des Assurances
CEPEA	Comprehensive Economic Partnership for East Asia
CEN	European Committee for Standardization/ Comité Européen de Normalisation
CFZ / FTZ	Customs Free Zone (CFZ) and Free Trade Zone (FTZ)
CJEU	Court of Justice of the European Union
CMO	Collective Management Organisation
DBD	Department of Business Development
DCU	drive control unit
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
EV	Electric Vehicle
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
ISA	Intelligent speed assistance
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
LFA	Less forza aero
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
NCAP	New Car Assessment Program for Southeast Asian Countries
NECTEC	National Electronics and Computer Technology Centre
NEVPC	National Electric Vehicle Policy Committee
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
PHEV	Plug-in Hybrid Electric Vehicle
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 <a href="http://www.thai-iod.com">www.thai-iod.com</a>
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
xEV	Electric Vehicle
ZEV	Zero-Emission Vehicle

# Introduction

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This Introduction chapter provides a short guide to using the 2022 European Business Position Paper, a brief economic overview, examines some areas of major relevance to the economy and business generally (eg Income and Wealth Gap; FTAs), about the pandemic, border opening, and economic recovery which are not covered in other Chapters. It describes EABCs approach to advocacy, EU Regulation and other factors.

To avoid duplication, the 2022 European Business Position Paper aims to address major issues in one primary location, with cross references to it from other areas, which may also delve into sector-specific aspects of that main topic.

Examples:

Sustainability: main concepts and approach – Cross Sectoral Issues (CSI) chapter, with cross references from Energy (which has sector-specific treatment of Sustainability issues) and other chapters.

Copyright in an on-line context: Intellectual Property Rights (IPR) Chapter, with cross references from Digital Economy/ICT Chapter.

Food & Agri: main concepts and approach in Food & Beverages (F&B) Chapter with cross references from Tourism where F&B is covered in more detail in a Tourism context.

The Table of Contents is a simple list of chapters. The left side bar offers navigation to chapter headings and sub headings, consistently to a certain level.

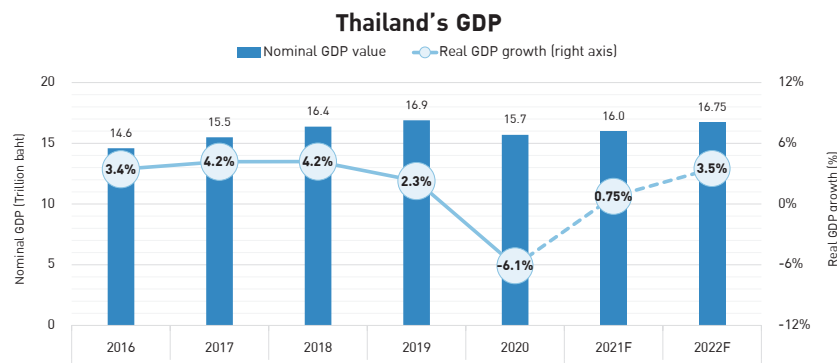
## A. The Thai Economy

### (1) GDP Growth and impacting factors

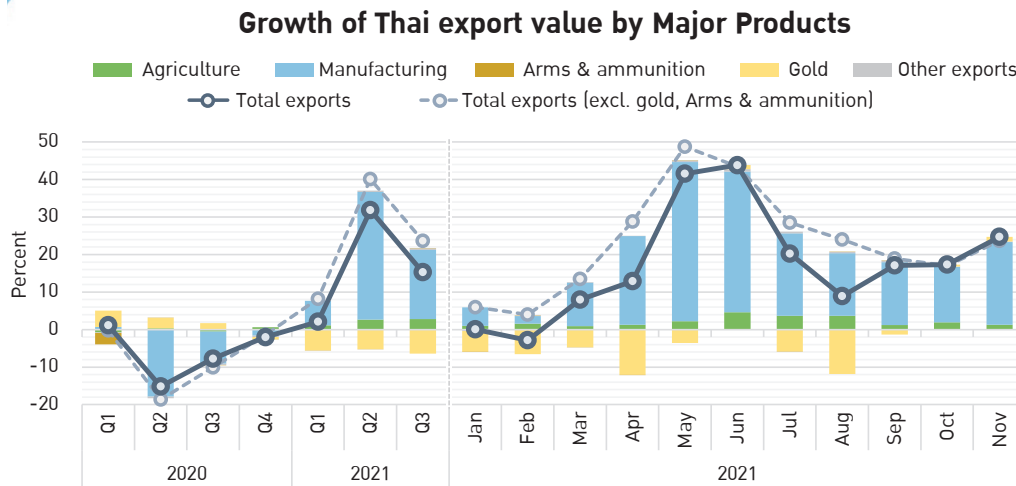
Thai economy experienced a large contraction by -6.1 % percent in 2020. In 2021, the GDP growth was -2.6% in the first Quarter and subsequently increases to 7.5% in second quarter. As at Jan 2022, estimates for 2021 centre around 0.75%.

The lower than expected result was in large part due to the consequences of new COVID 19 strains – delta and omicron. It will mean a longer period for return to pre COVID 19 levels.

**Figure 1: Forecast GDP (by % as of 6 Jan 2022)**



Source: TDRI



Source: TDRI Jan 2022

Exports have held up well. In 2019 Exports (about 54% of GDP) and Tourism (about 18% of GDP) made up 70% of Thailand's economy. In 2021, while exports have held up well, tourism is a low single digit.

Thailand's manufacturing production index (MPI) and the private consumption index fell to the lowest level in August 2021 due to the COVID-19 outbreak, containment measures, and the supply disruption. However, the MPI saw a small contraction and merchandise exports increased by 17.7% in September 2021. A small contraction occurred in the third quarter but with the further easing of lockdown measures from 1 October, then 1 November, a stronger economic result occurred for the fourth quarter of 2021.<sup>1</sup>

<sup>1</sup> World Bank Document

### International Tourist Arrivals:

- 2019: 39.8 m
- 2020: 6.7 m (mainly in Q1)
- 2021: 0.3m (estimate at January 2022)

The Tourism chapter in this Position Paper provides more details in what is needed, looking ahead. Tourism is a critical sector for Thailand.

### (2) Labour force

While the economy shrank, unemployment rose. Many workers reduced hours and/or changed jobs with lesser hours. Such situations are not classified as 'unemployed'. The dimensions in this TDRI chart consider these. (January 2022).



## Thailand labor force Status

	Unemployment (‘000,000)	Pseudo Unemployment (‘000,000)	Under- employment (Million)	Return Home (Million)	Working hour (hrs.)
At peak of COVID-19 impact	7.58	7.42	8.2	1.6	14,785
2019Q3	3.94	1.48	6.5	n.a.	15,353

*Source: Labor Force Survey with TDRI calculation*

### (3) Looking ahead, growth dependencies, vaccinations and border opening.

Forecasts became highly dependent on vaccination rollout. The Bank of Thailand’s seminal press release on the Monetary Policy Committee’s Decision on 5 May 2021 showed that Bank of Thailand used vaccine rollout almost as a proxy for GDP growth. The basis of the idea is that economic activity relies on levels of herd immunity. The key factors that would affect economic outlook are: new outbreaks, distribution and efficacy of COVID-19 vaccines, and the adequacy of government measures.

The Bank of Thailand’s advice was prescient. Thailand had a ‘zero’ or ‘elimination’ mindset until the Prime Minister’s 120 day statement in June 2021, under which the nation would open by mid October. The Phuket Sandbox model started 1 July 2021, 1 October was the shortened quarantine period and 1 November the one night

quarantine ‘Test and Go’ model. That was put on hold for a period due to the Omicron strain but was due to be relaunched from 1 February 2022 in a slightly revised format.

More balance of the economic aspects became prevalent, with a realization that ‘zero’ or ‘elimination’ would not work in the long run.

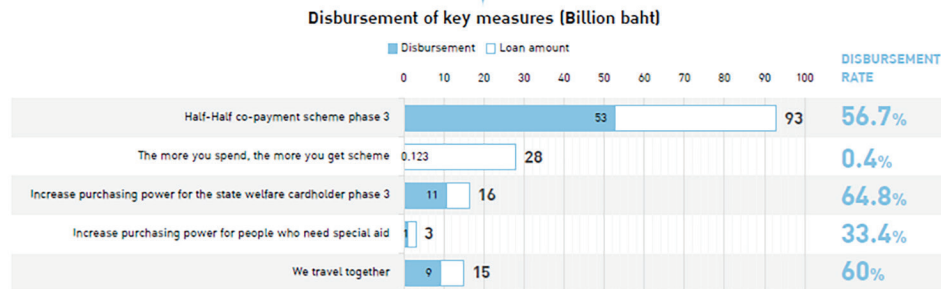
The World Bank notes (January 2022), that according to the January 2022 Global Economic Prospects report, global growth will slow markedly in 2022 and 2023. In contrast to advanced economies, output in emerging and developing economies (EMDEs) is not expected to return to pre-pandemic output trends by 2023. The global outlook is subject to downside risks, including pandemic resurgence, worsening supply bottlenecks, a de-anchoring of inflation expectations, and financial stress.

#### (4) Key drivers to recovery – state support

There were many schemes of state support, some by direct handouts but for business, soft loans were the main support, channelled through retail banks. Rollout tended to be slow as banks tended to use traditional security criteria and were concerned to avoid Non Performing Loans (NPL). It was not until a period in late 2021 where direct wage support was provided to companies that . By comparison with some other economies that type of support was very limited. SMEs in particular found it difficult to downsize under existing rules.

TDRI·EIS

## GOVERNMENT WILL CONTINUE TO FOCUS ON STIMULATING CONSUMPTION IN 2022



Source: The Comptroller General's Department

#### Upcoming Entrepreneur Assistance Program to promote and maintain employment

- **GOAL:** Help maintain employment in 394,621 small & medium enterprises with 4,034,590 Thai employees.
- **ASSISTANCE:** Provide financial assistance to employers registered in the Social Security System in the amount of Bt3,000 per Thai employee per month (not exceeding 200 employees) for a period of 3 months (Nov 2021 – Jan 2022).
- **CONDITION:** Employer must maintain 95% of the employment it has when entering the program.
- **ESTIMATED BUDGET:** Bt36 billion

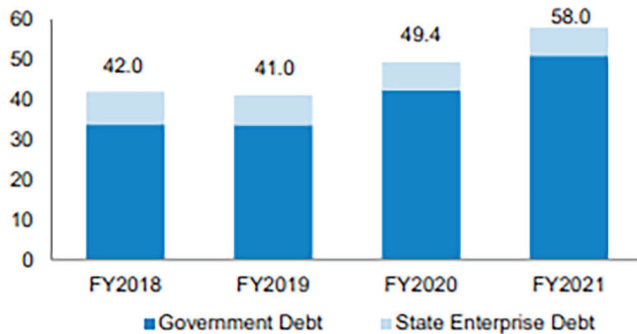
Source: TDRI Jan 2022

TDRI wrote that “The public sector remains the only key engine of the Thai economy. The government has ample resources to spend next year. Only 30% of the one-trillion-baht loan this year has been disbursed. Together with next year’s [2021] budgets of the central government, local administration organisations, and state-owned enterprises, the public sector’s resources add up to more than four trillion baht (around 25% of GDP). Public spending and investments will need to speed up next year to counter the negative impacts of the pandemic on SMEs and workers”.

The World Bank's Thailand economic monitor in July 2021 also stated that Thailand still had sufficient fiscal space for the recovery measures, while the efficiency of the measure remains a priority. The future concern would be on public debt which is forecasted to reach the ceiling of 60 percent of GDP in 2022, nudging it at just over 59% by mid 2021.

Public debt increased to 58% of GDP at the end of FY 2021 from 49.4% in the previous fiscal year.

**Figure 8: Public Debt is on the Rise.**  
(Percent of GDP)



Source: PDMO; World Bank staff calculations

Please refer to the SME Chapter for more details of state support as much is directly relevant to SMEs.

### (5) Necessary reforms for economic recovery

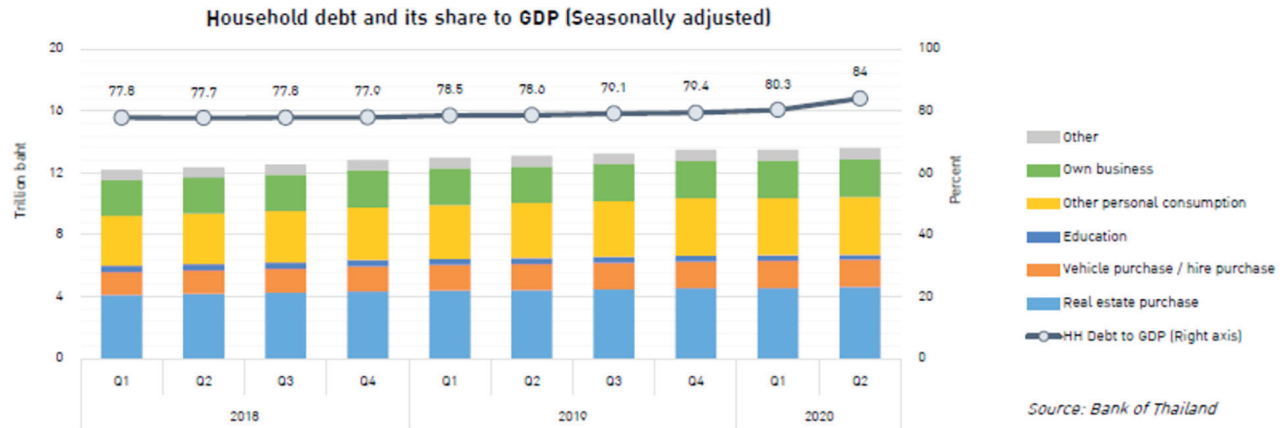
Pre pandemic World Bank reports (e.g. TEM launch January 2020) highlighted the need for productivity enhancement, service sector liberalization to stimulate FDI. The immediacy of survival has crowded out these issues somewhat, but EABC suggests that they are needed even more than ever.

The World Bank in their TEM report in July 2021 called for service sector liberalization but not with the pre-pandemic megaphone, stating that “Structural reforms could support key drivers of growth, mitigating downside risks and positioning Thailand to capitalize on upside potential. Reforms that lower trade costs and barriers could help maximize the benefits of the ongoing recovery of global economic activity. The liberalization of trade in services and other measures to promote economic openness, tighter enforcement of intellectual property rights, and the full implementation of the new competition law could attract knowledge-intensive foreign direct investment (FDI) and facilitate Thailand’s integration into more complex global value chains for higher-value-added goods and services.”

But the World Bank did not during 2021 go back to the clear recommendations of early 2020 for the kinds of structural reforms.

**Challenging factors** to regain competitiveness and resilience must reflect various circumstances and phenomena, including:

- i) Reskilling – managing the ‘great resignation’ and the gutting of organizational learning from some sectors.
- ii) Opportunities not taken to digitalise, thus being behind
- iii) Political issues
- iv) Transparency of government issues
- v) Infrastructure
- vi) Health and primary education
- vii) Rising household debt Its share in GDP rose from 79.4% in 2019 Q4 to 84% in 2020 Q2 due to a sharp drop in GDP.



For sustainable economic recovery, consistent with the theme of this Position Paper, there are **some fundamental strategies** which are hard to avoid. Some will need a change of mindset to allow for reforms. Needed is being more competitive, productive, upskilled and greener. Some of the key high level strategies, details of which are found in the Chapters, are:

- Safe Tourism and Travel; Strengthen defences and protection (vaccinations, balanced border rules); support short stay business and professional as well as tourism, continue vigilance but enjoy freedoms
- Reskilling and upskilling; education reform
- Liberalisation of services;
- The Thailand 4.0 vision – innovation
- Making Thailand an attractive ‘hub’ location; this includes upgrading infrastructure

- Fast Track Regulatory Reform for several areas, including Work Permit & Visa; Doing Business Easily, making Thailand a more attractive investment destination.
- Digitalisation
- Sustainability policies integrated into value-add for business
- Rule of Law / Transparency / Good law making / Anti-Corruption

EABC also publishes a convenient ‘TOP SET’ on the EABC website which is updated from time to time.

### (6) Thailand Position at the regional level

Thailand was hardest hit in the region with GDP slump in 2020 and has a challenge in regaining attractiveness for tourism. Thailand’s chairing APEC in 2022 offers some leadership opportunities. Comprising 38% of the world’s population and 60% of the world’s GDP, it will be a challenge for APEC to maintain trade openness in a world

reeling from economic devastation during an ongoing pandemic. The current backdrop of recent isolationist tendencies, heightened competition, and evolving alliances complicates things further.

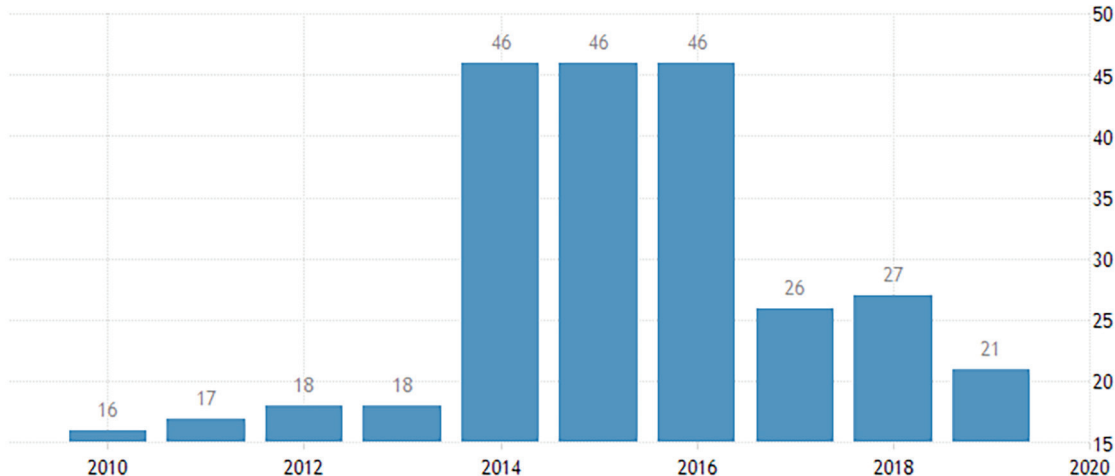
## B. Rankings

### (1) World Bank – Ease of Doing Business

For a long time, the most commonly referred to ‘Ease of Doing Business’ ranking was the World Bank’s<sup>2</sup>. The Ease of Doing Business applied 12 criteria of business regulation, but importantly, only 10 were used for ranking purposes and the index. These were mainly about setting up a business, but did not include in that 10, hiring foreigners or contracting with government.

But work permit/visa issues (which impact local and foreign companies) and contracting with government are highly relevant to overall Ease of Doing Business in Thailand; work permit and visa issues are the most commonly referred to issues faced in everyday experience (see CSI Chapter)

#### Thailand’s World Bank EoDB ranking over some years<sup>3</sup>



SOURCE: TRADINGECONOMICS.COM | WORLD BANK

<sup>2</sup> <https://www.doingbusiness.org/en/rankings>


<sup>3</sup> <https://tradingeconomics.com/thailand/ease-of-doing-business>

This chart from has some lag with published year/applicable year. Example – nominal 2020 ranking is 21<sup>st</sup>, published in 2019; nominal 2019 ranking 27<sup>th</sup>, published 2018.

However the history of rankings is accurate. The World Bank has confirmed that they were remeasurements from time to time.

The World Bank paused the Ease of Doing Business measure and ranking in August 2020 and officially ceased it permanently in September 2021. The last published ranking (2020, published late 2019) had Thailand at 21<sup>st</sup>.

For the 2020 ranking for Thailand there is wide disparity in the sub-rankings for each of the ten criteria – ranging from 3<sup>rd</sup> (protecting minority investors) and 6<sup>th</sup> (getting electricity) to 62<sup>nd</sup> (trading across borders) and 67<sup>th</sup> (registering property).

Economy	Ease of Doing Business Rank 	Rank within group	Starting a Business	Dealing with Construction Permits	Getting Electricity	Registering Property
Thailand	21	21	47	34	6	67

Economy	Getting Credit	Protecting Minority Investors	Paying Taxes	Trading across Borders	Enforcing Contracts	Resolving Insolvency
Thailand	48	3	68	62	37	24

As of late 2021, some agencies in Thailand were working on proposing a replacement. World Bank has indicated that that might take two years to launch. Other rankings provide some insight into similar issues.

Ease of Doing Business remains an important concept. To avoid confusion with the ranking, the expression ‘Doing Business Easily’ has been adopted by some.

## (2) Competitiveness and Resilience

The competitiveness landscape indicates the country’s ability to compete in the world economy and Thailand’s ability to attract investments. The prolonged COVID-19 pandemic might leave a long-term economic scar to the Thai economy. Analyzing the competitiveness and its resilience will thus be crucial to support the economic recovery. The measures in which we used to analyze include not only the overall landscape, but also in other aspects such as digital capacity, human capital and public’s corruption perception.

Index	Measure	2018	2019	2020	2021
IMD World Competitiveness Ranking	Measures the competitiveness on the basis of the 235 ranked criteria	30 <sup>th</sup> /63	25 <sup>th</sup> / 63	29 <sup>th</sup> / 63	28/64
IMD Digital Competitiveness Ranking	Measures the capacity and readiness to adopt and explore digital technologies as a key driver for economic transformation in business, government, and wider society.	39 <sup>th</sup> /63	40 <sup>th</sup> / 63	39 <sup>th</sup> / 63	-
WEF Global Competitiveness Index	Measures national competitiveness as the set of institutions, policies and factors that determine the level of productivity.	38 <sup>th</sup> / 140	40 <sup>th</sup> / 141	-	-
Networked Readiness Index (NRI) by Portulans Institute	Measure the use of ICT for development and competitiveness based on four different pillars: Technology, People, Governance, and Impact.	-	56 <sup>th</sup> / 121	51 <sup>st</sup> / 134	-
World Bank Human Capital Index 2018:	Measure productivity of next generation workers relative to benchmark of education and full health	65 <sup>th</sup> / 157	-	-	-
Transparency International's Corruption Perception Index	Measures the perceived levels of public sector corruption according to experts and businesspeople	99 <sup>th</sup> / 180	101 <sup>st</sup> / 180	104 <sup>th</sup> / 180	110 <sup>th</sup> / 180
Nikkei COVID-19 Recovery Index	Measures infection management, vaccine rollouts and social mobility. A higher ranking indicates that a country or region is closer to recovery. Comment: this ranking made Thailand an outlier; other similar rankings place Thailand much better than global average.	-	-	-	119 <sup>th</sup> /120

*Sources<sup>4</sup> :*

<sup>4</sup> <https://www.imd.org/centers/world-competitiveness-center/rankings/world-competitiveness/>

<https://www.imd.org/centers/world-competitiveness-center/rankings/world-digital-competitiveness/>

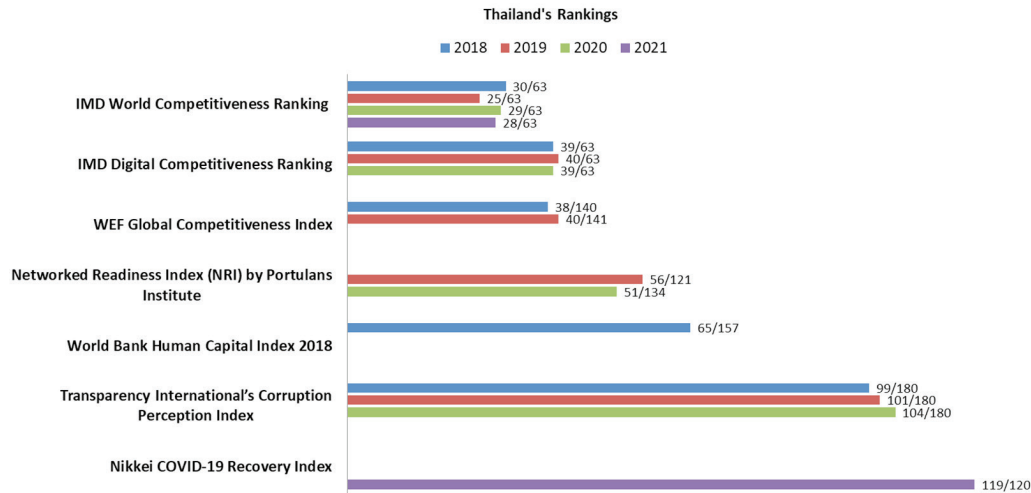
[https://www3.weforum.org/docs/WEF\\_TheGlobalCompetitivenessReport2019.pdf](https://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf)

<https://networkreadinessindex.org/#:~:text=Since%20network%20readiness%20is%20a,fundamental%20dimensions%20of%20network%20readiness.>

<https://www.worldbank.org/en/data/interactive/2018/10/18/human-capital-index-and-components-2018>

<https://www.transparency.org/en/cpi/2020/index/tha>

<https://asia.nikkei.com/Spotlight/The-Big-Story/Nikkei-COVID-19-Recovery-Index>



Source: tabled prepared by EABC. Distance from left is not scaled.

Source: <https://worldcompetitiveness.imd.org/countryprofile/overview/TH>

## C. European Business; EABC Advocacy

European business at its best offers experience, integrity, leading technology and knowhow with a values-based approach to problem solving, coupled with a legal and regulatory system which reflects advanced thinking, policy and regulation developed over a long period.

Thus European business and Europe have much to offer; European business as a partner and investor and Europe as a trading partner.

**EABC champions European business in Thailand** and keeps a regional view. EABC does not represent any government, nor is it part of an FTA negotiating team.

EABCs **geographical scope** is Europe (consistent with other similar organisations). It covers the European Economic Area (EEA)<sup>5</sup> which includes the 27 EU member states, and three of the four EFTA member states. EABC also include Switzerland and the UK in its scope. Clearly the centre of gravity is the EU, which is a political union as well as an economic union.

EABCs special approach to advocacy, which is in an Advocacy Development strategy and procedures resources, shows two phases:

### *Development or 'baking' stage*

- i) Identify issues based on consensus, bring expertise to bear, research
- ii) Build consensus in the European and other foreign business community

<sup>5</sup> <https://www.gov.uk/eu-eea>



- iii) Engage with local companies and with government to understand and frame optimal outcomes

#### *Engage on delivery*

- iv) Use various methods such as small group meetings, white papers, workshops, seminars/conferences, public hearings, submissions, letters and occasionally press releases
- v) EABC does not make demands but engages in dialogue; EABC sees itself as a partner in the economy.

It is part of EABCs mission to promote good business. It is important that EU policies are well understood, as well as Thailand's and regional policy and regulation.

## D. Policy, Law and Regulation

### (1) Influence, Relevance and Application

How EU Policy, law and regulation needs to be treated is more nuanced than might be thought. EU is domestically focused as well as, in many respects, internationally. It can be treated, broadly, in about three ways:

- Some policies are **EU internal only** and address the internal market; they may show EU as a leader in good administrative practice and this may be a good precedent or 'best practice'. They are not necessarily intended to be globally influential but could become so. As with any democratic economy, there are various political views, and not all EU nationals or companies or indeed all EU member states are in favour of all EU regulation and law.
- Some laws have **extra-territorial reach but were not necessarily intended to be globally influential** eg GDPR – it depends on EU connecting factors for it to apply. If the Regulation is widely attractive, harmonisation or compatibility may be beneficial; thus a local law on similar terms can be very useful. The GDPR filled a global vacuum or gap and has become a global standard. Compatibility or harmonisation with it is generally beneficial to other economies' privacy regimes. That does not mean it should be copied, article by article. Ethical business and Responsible Business Conduct (RBC), support for Rule of Law is another example. To the extent that these are relevant and transportable they can form part of valuable precedents or 'best practice' and can be very useful especially in the face of other foreign business interests which do not have such values. Others may, on examination, not reflect 'best practice'.
- Some policies have a more overt intention to be **globally relevant** and are intended to have extra-territorial reach. They may technically only be applicable for the internal market but have border or investment rules for example. Thus the European Green Deal and CBAM will inevitably have global influence and impact especially if certain rule and policy are required to be in an FTA. See more in the Energy and CSI (Sustainability Cluster) chapter. It is wrong to assume somehow they automatically apply in Thailand by virtue only of coming into force but no-one should shy away from championing a valuable example, precedent or standard. The issue of local adaptation is also always relevant.

## EABCs approach

European business practices and values can be most attractive in many ways and it is part of EABCs mission to promote good business. Further it is important that EU policies are well understood; also Thai policies, law and regulation, and regional policies and regulation.

EABC always looks for what is best for European business in Thailand. There may be examples and precedents from almost anywhere, in addition to those from Europe, and there can be benefit with European harmonisation.

### (2) Short Backgrounder about the EU; Thailand and ASEAN – policy, law and regulation.

The European Union (EU) is a political and economic union of 27 member states.

The European Commission (EC) is the executive branch of the European Union, responsible for proposing legislation, enforcing EU laws and directing the union's administrative operations.

The Council of the European Union, or 'the Council' is one of three legislative bodies; it has representatives of EU member states.

The European Parliament is one of three legislative bodies.

#### (a) Within the EU – types of law<sup>6</sup>

##### Primary versus secondary law

Every action taken by the EU is founded on the treaties. These binding agreements between EU member countries

<sup>6</sup> Source: *Types of EU law | European Commission (europa.eu) content is paraphrased, extracted or summarised*

set out EU objectives, rules for EU institutions, how decisions are made and the relationship between the EU and its members.

Treaties are the starting point for EU law and are known in the EU as primary law.

The body of law that comes from the principles and objectives of the treaties is known as secondary law; and includes regulations, directives, decisions, recommendations and opinions.

##### Legislative versus non-legislative acts

Legislative acts are adopted following one of the legislative procedures set out in the EU treaties (ordinary or special). Non-legislative acts do not follow these procedures and can be adopted by EU institutions according to specific rules.

The EU can pass laws only in those areas where its members have authorised it to do so, via the EU treaties.

#### (b) Types of EU legislation<sup>7</sup>

The EU parliament is a supra-national legislature.

The aims set out in the EU treaties are achieved by several types of legal act. Some are binding, others are not. Some apply to all EU member states others to just a few.

##### Regulations

A "regulation" is a binding legislative act. It must be applied in its entirety across the EU. For example, when the EU wanted to make sure that there are common safeguards on goods imported from outside the EU, the Council adopted a regulation.

<sup>7</sup> Source: *Types of EU law | European Commission (europa.eu) content is paraphrased, extracted or summarised*

### Directives

A “directive” is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual member states to devise their own laws on how to reach these goals. One example is the EU consumer rights directive, which strengthens rights for consumers across the EU, for example by eliminating hidden charges and costs on the internet, and extending the period under which consumers can withdraw from a sales contract.

### Decisions

A “decision” is binding on those to whom it is addressed (e.g. an EU member state or an individual company) and is directly applicable. For example, the Commission issued a decision on the EU participating in the work of various counter-terrorism organisations. The decision related to these organisations only.

### Recommendations

A “recommendation” is not binding. The Commission’s recommendation that EU member states’ law authorities improve their use of videoconferencing to help judicial services work better across borders, did not have any legal consequences. A recommendation allows the institutions to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed.

### Opinions

An “opinion” is an instrument that allows the institutions to make a statement in a non-binding fashion, in other words without imposing any legal obligation on those to whom it is addressed. An opinion is not binding. It can be issued by the main EU institutions (Commission, Council, Parliament), the Committee of the Regions and the

European Economic and Social Committee. While laws are being made, the committees give opinions from their specific regional or economic and social viewpoint.

### (c) Thailand – brief overview of types of laws

The Kingdom of Thailand is a constitutional monarchy (since 1932). The legal system is based primarily on the civil law system (using Codes such as the Civil and Commercial Code), but influenced by the common law tradition (for example Supreme Court decisions have persuasive authority). Thailand has a bicameral legislature. Many law making procedures were borrowed from the English legal system. (eg legislative procedure, Royal Assent following passage by parliament, then publishing in the gazette).

Legal persons are natural persons (individuals or human beings) or ‘Juristic Persons’ (aka Juridical Persons), being non-natural entities such as companies.

Quick overview of ***types of law***

#### Primary law:

- Acts of Parliament (eg Personal Data Protection Act). An Organic Law or Organic Act has special originating requirements (eg Organic Act on Prevention and Suppression of Corruption).
- Fundamental laws that form the backbone of Thai law have been codified into four codes: The Civil and Commercial Code, the Penal Code, the Civil Procedure Code and the Criminal Procedure Code.

- Decrees (often called Emergency Decree; Royal Decree) (eg Emergency Decree on Public Administration in Emergency Situation BE 2548 (2005), more of which below).

### **Subsidiary laws, or regulations.**

- Typically a Notification; The regulation should be within the scope of the power granted to the relevant authority, under the primary law, otherwise the Notification may be beyond the power (*ultra vires*) and possibly invalid. (eg of a Notification - Foreign Dominance Notification). They may also be an Order or a Rule.
- Announcement.
- Decree.
- Cabinet (or Council of Ministers) Decisions may have *de facto* standing as a regulation; or a cabinet decision may be the prescribed process under a primary law (eg a change to List 2 of the Foreign Business Act).

A Thaksin era 2005 Emergency Decree allowing for a State of Emergency to be called is the basis of the State of Emergency decreed 25 March 2020 which took effect 26 March 2020, and extended multiple times (at publication time, most recent was to 31 January 2022). This gave the Prime Minister wide powers, the context being pandemic management. Under s. 7, a Notification of laws was made whereby the powers and authorities of various public officials were transferred to the Prime Minister:

s. 44 Order was a very broad power which the NCPO (military authority from May 2014) had. This was extended by s.265 of the Constitution. There is no power currently to make new laws in this way.

Treaties are agreements between or amongst nation states. They are part of public international law. They apply to domestic or 'municipal' law once part of an Act or other instrument referred to above. Generally an individual or juristic person has no standing to invoke a treaty, unless that is specifically provided for. Thailand is not the only state in the world which has not fully implemented into domestic law, all obligations taken on at the international level.

### **(d) ASEAN**

ASEAN has no supra-national legislature. Sources of near equivalents to laws include Agreements, MoUs, Statements and other instruments. They rely on each AMS (ASEAN Member State) agreeing or concurring and then each AMS implanting domestic (or municipal) legislation. Examples include the AEC Agreement, the Transboundary Haze Agreement (see CSI Chapter). The Annex to the Digital Economy/ICT chapter lists most digital-relevant ASEAN instruments.

Various ASEAN treaties are state-to-state. Invocation by an ASEAN national (citizen or company) relies on an AMS making a domestic or municipal enactment.

## E. Europe-Thailand: Partnership towards Mutual Prosperity

### (1) EU-Thailand: Partnership towards Mutual Prosperity

Figure : Total goods: EU – Thailand Trade flows and balance, annual date 2009-2020, unit in million euro

Total goods: EU Trade flows and balance, annual data 2010 - 2020

Source Eurostat Comext - Statistical regime 4

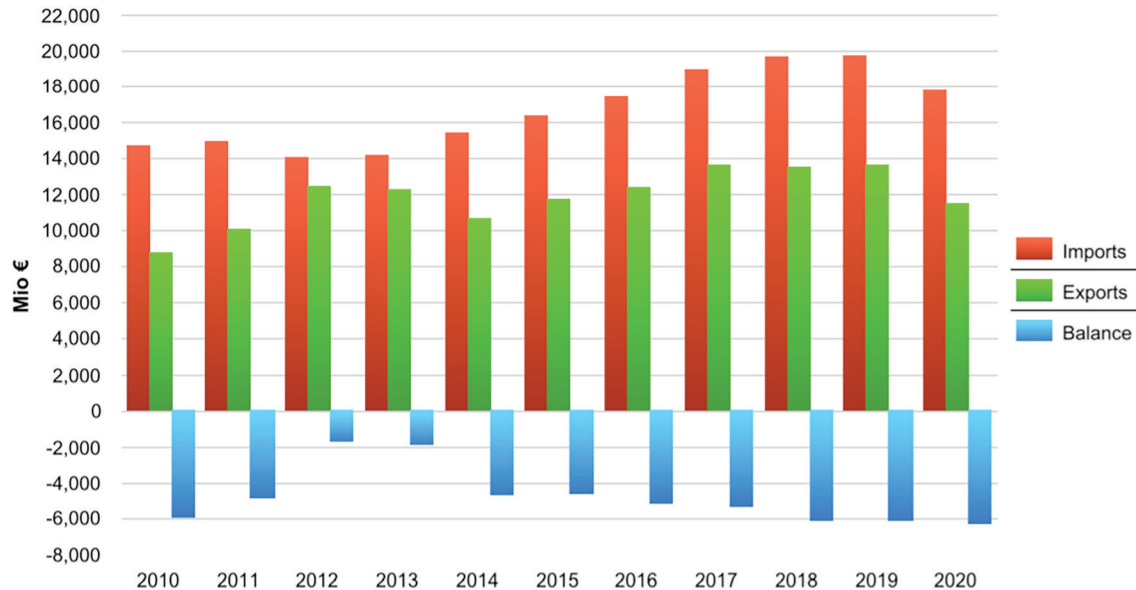


Figure 2: Total goods: EU Trade flows and balance, annual date 2009-2020

Source: European Commission, Eurostat Comext - Statistical regime 4

In 2020, total bilateral trade between Thailand and the EU amounted to €29 billion. The EU is Thailand's fourth largest trade partner (after China, Japan and the US), accounting for 7.5% of the country's total trade. Thailand exported goods worth €15.1 billion to the EU in 2020. Key exports from Thailand are machinery and electronics and transport equipment, miscellaneous manufactured articles, as well as food products. EU exported goods worth €11.3 billion to Thailand in 2020 including machinery and transport equipment, chemicals and related products, and manufactured goods.

During the first four months of 2021, trade between the two economies was valued at 12.8 billion USD (388.3 billion THB), 10.95% growth compared to the same period last year. Exports generated 7.3 billion USD (218.4 billion THB) for Thailand, a 17.98% increase, while imports from the EU were 5.6 billion USD (169.8 billion THB), a 2.94% increase on the same period in 2020.

Key export products were computers and parts; automobiles and parts; gems and jewellery; air conditioners and parts; rubber products; and processed chicken. Key imports were machinery and parts; aircraft; electrical machines and parts; and chemicals. The EU imports from Thailand worth € 5.6 billion in 2019, while EU exports to Thailand worth € 4.8 billion.

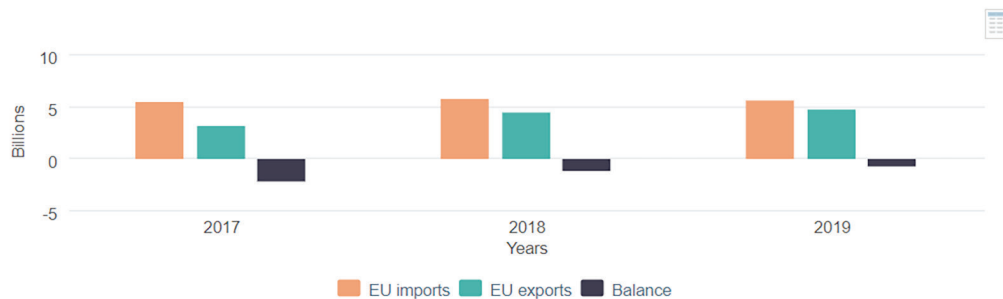
**Figure 3: Total goods: EU Trade flows and balance** Source: European Commission, Eurostat Comext – Statistical regime 4

Total goods: EU Trade flows and balance								
Period	Imports			Exports			Balance	Total trade
	Value Mio €	% Growth	% Extra-EU	Value Mio €	% Growth	% Extra-EU	Value Mio €	Value Mio €
2010	14,655		1.0	8,734		0.6	-5,920	23,389
2011	14,913	1.8	0.9	10,004	14.5	0.6	-4,908	24,917
2012	14,029	-5.9	0.8	12,373	23.7	0.7	-1,656	26,403
2013	14,117	0.6	0.9	12,271	-0.8	0.7	-1,846	26,387
2014	15,387	9.0	0.9	10,661	-13.1	0.6	-4,726	26,048
2015	16,342	6.2	1.0	11,714	9.9	0.6	-4,628	28,056
2016	17,442	6.7	1.1	12,284	4.9	0.7	-5,159	29,726
2017	18,923	8.5	1.1	13,598	10.7	0.7	-5,324	32,521
2018	19,635	3.8	1.0	13,502	-0.7	0.7	-6,133	33,136
2019	19,687	0.3	1.0	13,553	0.4	0.6	-6,134	33,239
2020	17,725	-10.0	1.0	11,408	-15.8	0.6	-6,317	29,133

Source Eurostat Comext - Statistical regime 4

% Growth: relative variation between current and previous period  
 % Extra-EU: imports/exports as % of all EU partners i.e. excluding trade between EU Member States

#### EU-Thailand: Trade in services



Source :<sup>8</sup>

<sup>8</sup> <https://ec.europa.eu/trade/policy/countries-and-regions/countries/thailand/>,  
[https://webgate.ec.europa.eu/isdb\\_results/factsheets/country/overview\\_thailand\\_en.pdf](https://webgate.ec.europa.eu/isdb_results/factsheets/country/overview_thailand_en.pdf)

Trade in goods and services is both supported by international data flows and is valuable in its own right. The value of data in trade is interesting in comparison to that of goods and services. Based on WTO jurisprudence, data is itself a service. Digital innovation has greatly expanded that the toolbox companies can use to globalize their market reach and operations, enabling more cross-border activities.

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

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

SOURCE: McKinsey Global Institute analysis

Source: McKinsey Global Institute [full report here](#).

Besides the trade negotiations with Thailand as an individual country, the EU cooperates closely with the ASEAN region as a whole. The EU is ASEAN's second largest trading partner after China, accounting for around 14% of ASEAN trade. The EU's main exports to ASEAN are chemical products, machinery and transport equipment. The main imports from ASEAN to the EU are machinery and transport equipment, agricultural products as well as textiles and clothing.

Cooperation between the two regions is framed by a biannual ASEAN-EU Trade and Investment Work Programme, which is articulated along various activities included; an EU-ASEAN dialogue which includes discussions on trade and investment issues at ministerial and senior economic officials levels; bi-regional expert dialogue groups; cooperation activities; regular organisation by business of ASEAN-EU Business Summits.

## (2) Trade Liberalization under an EU-Thailand FTA: Mutual Economic Gains

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

In the view of the Department of Trade Negotiations (Ministry of Commerce), Thailand has proven itself to be a dynamic force for regional multilateralism through the construction of ASEAN, and more recently through the negotiation of RCEP. The country will continue to shape modern, comprehensive, high-quality, and mutually beneficial trading rules and can play in a global scale with its European partners. The EU has already concluded FTAs with Singapore and Vietnam, with at least two other ASEAN member states being in negotiations process. Thus, broadening EU's engagement with Thailand via FTA negotiations would unlock the great benefits in trade and investment benefits between the two parties.

If Thailand and 27 EU members excluding UK cancel all import tariffs, then in the long-run Thailand's gross domestic product will be boosted by 1.28 percent worth 205 baht billion per year, according to the study of Department of Trade Negotiations of Thailand. Exports to the EU will rise by 2.83 per cent or 216 billion baht per year, while imports from EU will expand 2.81 per cent or 209 billion baht per year. Thai products that have good growth potential in the EU market include vehicles, auto parts, garments and textile, rubber and chemical products. The study also shows that upgrading related sectors, such as transport, finance and insurance, in line with the free-trade accord (FTA) will reduce production costs in related industries.

A research company (IFD) contracted to DTN has provided a useful report which shows many positives through a meaningful FTA , especially in services.

An expected time table toward an EU–Thailand FTA could be:

- Joint Understanding Document (like a scoping document) – early 2022
- Negotiations – through 2022 and
- FTA terms finalised – possible 2023.

### (3) EFTA

The European Free Trade Association comprises of four members Iceland, Liechtenstein, Norway and Switzerland. Efforts in Thailand are primarily led by business and missions from Switzerland and Norway.

Principal barriers to Thailand-EFTA trade in goods, services, investment, government procurement and

others that should be reduced or abolished, both natural and intended barriers

- i) Many liberalized positions inbound to Norway, Switzerland which do not appear for investors into Thailand – e.g. 100% FEL, no hiring restrictions etc.
- ii) 100% ownership without FBL/FBC, get away from 4:1 ratio (still being practiced); Thai investors want to attract young entrepreneurs but don't have budgets to employ 4 Thais until they work out how to structure.
- iii) FBA story and history and current focus; trade in services (e.g. logistics)
- iv) BOI is not the panacea for foreign investment policy development or liberalization, it does not see itself that way. It is not a fall back from FBA shortcomings.
- v) Non-tariff measures and non-tariff barrier. Many companies with monopolistic behavior.
- vi) Illegal, unreported and unregulated fishing (IUU)
- vii) UPOV 1991 (CP TPP), Norway is not a signatory, Thailand is not a member.
- viii) What is important to Thailand in UPOV in terms of conditions – limit impact
- ix) Banking and finance
- x) Pharmaceuticals – generic drugs.

Possible areas of interest for greater investment from Thailand are medical tourism, recuperation in Thailand. IFD which is an advisor to DTN has also offered clean and renewable energy.

Certain kinds of goods, services, investment, government procurement



a. Thailand would benefit from reducing trade barriers for EFTA

- i) Pharmaceuticals – generic drugs, Illegal, unreported and unregulated fishing (IUU)
- ii) Procurement in Thailand – government contracts – need to be selected.
- iii) Temporary movement of foreign skilled people
- iv) Logistics, Banking and Finance, Engineering services

EFTA could reduce trade barriers for Thailand

- i) Food services (to support Thai chefs for food authenticity)
- ii) Spa services
- iii) Health spa for medicine

#### (4) RCEP Regional Comprehensive Economic Partnership

RCEP was signed by 15 nations in Asia-Pacific including Thailand in November 2020 and came into force on 1 January 2022.

The agreement will become the world's largest trading bloc with 15 member countries including the ten ASEAN member states as well as five of their free trade agreement partners – Australia, China, Japan, New Zealand, and the Republic of Korea. The six ASEAN countries submitted their approval letter for the RCEP on October 28 2021 imply a positive sign for the agreement ratification at regional level. It covers 2.3 billion or 30% of the world's population, represents US\$38.8 trillion or 30% of global GDP based on 2019 data. Its implication is not only the less-concerned custom duty and trade in goods, but also trade in services and respective investment regulations. While it has little for e-commerce, it offers more liberalized

trade in goods, and small and medium enterprises (SMEs) and other specific sectors.<sup>9</sup>

The F&B Chapter shows how Thailand could benefit from RCEP in the food sector. RCEP could also support better business mobility (see CSI Chapter).

#### (5) CPTPP

Thailand is still considering whether to join Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), an FTA among 11 countries, namely four ASEAN member states, Brunei, Malaysia, Singapore, and Vietnam and Japan, Australia, New Zealand, Canada, Chile, Mexico, and Peru, contributing around 13.5 percent of global GDP. The United States which quit TPP in January 2017 may rejoin the TPP.

#### (6) Thailand-UK Partnership

The United Kingdom left the European Union on 31 January 2020. In 2020 the EU and the UK reached an agreement on their new partnership. It sets out the rules that apply between the EU and the UK as of 1 January 2021.

After the Brexit, Thailand was the first country in ASEAN to sign the MoU with the UK to set up a Joint Trade Committee on Commerce and Economic Cooperation, paving the way for a future free trade agreement (FTA) to expand trade an investment particularly in potential sectors like agriculture, food, finance and health<sup>10</sup>.

<sup>9</sup> Information taken from : <https://www.bangkokpost.com/business/2116783/thai-agencies-close-in-on-rcep-approval>; <https://www.china-briefing.com/news/ratification-status-rcep-expected-timeline-china-thailand-already-ratified/>

<sup>10</sup> <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/regional-comprehensive-economic-partnership-rcep/rcep-overview> - <https://fta.miti.gov.my/index.php/pages/view/71>

## F. Income Gap and Wealth Gap

### (1) What is the Income Gap?

Income is the flow of money that comes into a household in a particular year from employers, owning a business, state benefits, and so on. Relevant is the extent to which income is distributed in an uneven manner among a population, or income inequality. Income inequality is popularly measured by GINI index. It is the cumulative proportions of the population against cumulative proportions of income that one particular group receive, ranging between 0 in the case of perfect equality and 100 for the case of perfect inequality.

A large income gap can inhibit growth and slow poverty reduction through unequal education opportunities for children from low income family. This means that some children will enter the workforce much better prepared than others, lowering the social mobility and skills development, thus make them less productive employees who receive low wages, having low purchasing power and lower overall participation in the economy. Through this mechanism, inequality hurts everyone regardless of economic status. Narrowing the inequality today is thus crucial to allow our children to reach their full potential, be productive in society, and help the economy grow.

### (2) What is the Wealth Gap?

Wealth, unlike income, is the concept of net worth accumulated over time, or in other words, an individual's asset less of liabilities. Wealth inequality is therefore the unequal distribution of assets among individuals. Various

indicators for wealth gap are such as mean net wealth per household, share of top 1 percent wealth as compared to the bottom.

High level of wealth disparities can increase economic vulnerability, limit social mobility and lower equality of opportunity, for example through the role of inheritances. When initial condition of a person is constrained by the wealth of their parents, the likelihood of moving up or down in the income distribution, changes in position like educational attainment and occupational status are less likely. This will trap people in poverty across generation, and may also reduce overall middle-class demand for consumer goods or even fuel debt crises.

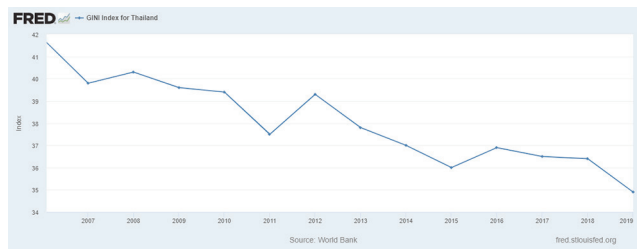
Wealth and income inequality are also related. Income can be stored as wealth, so widening income gap also leads to different level of accumulated wealth through the size of balance sheet of business. At the same time, as wealth is a source of investment, widen wealth gap implies larger differences between the rich and the poor in their ability to take advantage of investment opportunities, so those who don't have saving may not get income earned from invested capital, highlighting income inequality even further. People with few assets also find it harder to access the first small steps to larger opportunities, such as a loan to start a business or pay for an advanced degree.

### (3) Thailand and existing gaps

Inequality will be a prime concern for Thailand once the economy recovers from the pandemic. As recovery measures left some vulnerable household uncovered, it

is likely Thailand will experience a K-shaped recovery where the poor will experience a recovery at the slower pace than the rich do. Even before the coronavirus outbreak, Thailand remained one of the most unequal societies in Southeast Asia. The COVID-19 outbreak will only deepen these existing income and wealth inequalities.

### Income gap

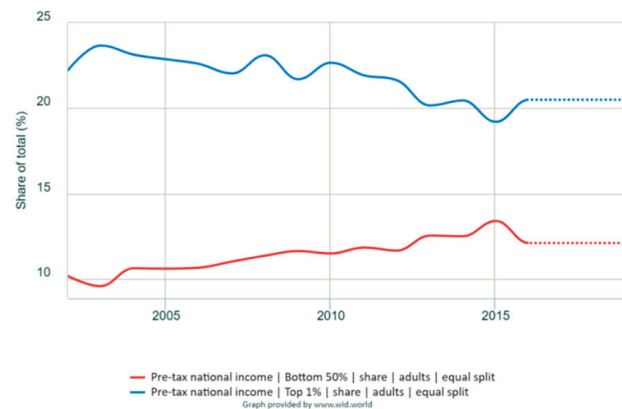


Source: World Bank, FRED

Although Thailand's income inequality has been improved throughout decades, as shown by a declining trend in the World Bank's GINI index, the value is still high. In 2019, Thailand's GINI index stood at 34.9, improved from 36.4 in 2018. Thailand was the fourth in a ranking of income inequality in ASEAN in 2018. The Philippines has a GINI index value of 44.4, making it a country with the widest income gap in the region, followed by at 41.0 and Indonesia at 39.0.

Thailand's income inequality remains high as Top 1 % accounts for 20.5 % of national income share in 2016, while the bottom 50% holds only 12% of national income.

### Income inequality, Thailand, 2003-2019



### (4) Wealth gap and intergenerational inequality

The wealth gap in Thailand remains significant. Thailand topped the world ranking in terms of its wealth gap in one year. According to Credit Suisse's 2018 "Global Wealth Report", the richest 1 percent in Thailand controlled almost 67 percent of the country's wealth. With a high burden of household debt and a lack of regular income, the share of the bottom 10 percent in the nation's wealth was close to 0 percent. Even the bottom 50 percent of Thais had a meager 1.7 percent share in the country's wealth, in contrast with 85.7 percent share enjoyed by the country's richest 10 percent.

In addition, the wealth of the rich is reported in Forbes magazine, showing how quickly their wealth has increased. The net worth of the rich is very high, reflecting that wealth inequality in Thailand has not been reduced.

## Mean net worth of top 1,000 Forbes billionaires relative to 19 February 2020

Country	No. of billionaires	Mean net worth (19 February =100)		
		18 March	30 May	30 June
United States	358	70.0	81.7	83.1
China	142	80.1	93.4	103.2
Germany	66	67.3	77.0	80.0
Russia	43	67.0	79.2	79.2
Hong Kong SAR	39	74.5	83.3	82.8
India	39	70.6	83.2	88.8
France	28	61.6	77.4	82.4
United Kingdom	24	67.2	75.2	75.7
Canada	21	68.7	76.6	81.1
Switzerland	19	73.1	82.0	85.7
Italy	15	59.9	68.0	71.4
Japan	15	73.2	89.6	101.4
Sweden	13	64.9	81.4	85.4
Taiwan (Chinese Taipei)	13	73.3	83.7	84.3
Australia	12	69.1	84.1	90.5
Singapore	12	71.2	82.5	83.6
Brazil	11	68.6	77.1	86.4
Israel	10	68.4	76.7	74.0
Thailand	10	70.5	83.9	85.7
Korea	9	73.4	93.5	109.2
<b>All countries</b>	<b>1000</b>	<b>70.3</b>	<b>82.0</b>	<b>84.8</b>

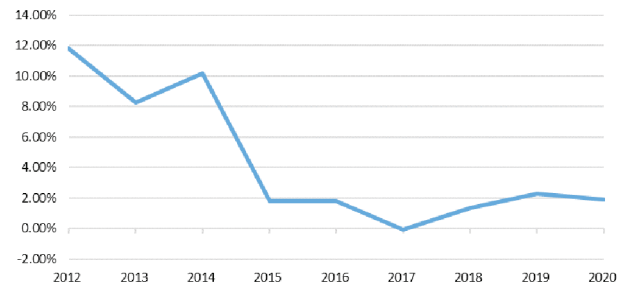
Source: 18 March net worth refers to Forbes 2020 World's Billionaires list. 30 May and 30 June net worth refer to Forbes World's Real-Time Billionaires lists on those dates. 19 February net worth is authors' own estimate

Source: Credit Suisse's Global Wealth Report 2020

In Thailand, the **minimum wage** ranges from 313 to 336 THB per day depending on the location. In 2019, **Bangkok poll** found that 42.1 percent of the respondents admit that the current minimum wage is just enough to meet their daily expense, with no savings at all while 31.6

percent says the wage is not sufficient to make a living, forcing them to borrow. The stagnation in wage has been one of the issues since 2015, as shown by low wage growth. Furthermore, the COVID-19 pandemic also induce firms to lower costs so as to boost up profits, making wages and prices less responsive to economic conditions. With low wage growth and the inflation rising up, the purchasing power is thus lower.

Figure: Average wage growth



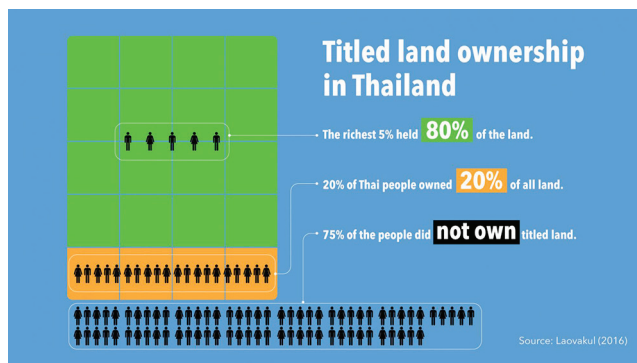
Source: Bank of Thailand

Apart from low wage income, **the rising house prices are causing a housing affordability issue**. Single-detached house price increases ranging from 2.1 to 5.9 percent year over year since 2019. With low wage rate, ability to buy house for low income group is unlikely while the rich can pass on their house to their children. On top of that, 75% of Thai people did not own land, while the richest 5% owned almost 80% of the land, emphasizing intergenerational inequality issue.

### House price index growth by types (y-o-y)



Source: BOT



Source: <https://thailand.un.org/th/node/90303>

### (5) Impact of the COVID-19 on poverty and role of social assistance

According to NESDC and the World Bank, the number of people living under the poverty line increased to 5.8 million during 2020-2021, up by 1.5 million in 2019 mainly due to the impact of the pandemic, with millions of people forced into involuntary unemployment. The majority of them are in the informal sector, without a formal contract or salaried jobs, as well as the access to social security fund. Almost 50 percent of Thailand's workforce consists of own-account workers and contributing family workers, or vulnerable employment.

The World Bank recognized Thailand measures to reduce the gap and falling into poverty more. Thailand social assistance for the COVID-19 response accounted for 2.5 percent of GDP in 2020 and 1.5 percent in 2021, a large amount in term of size and coverage as compared to international peers. However, only 40 percent of working age is covered by the social insurance, leaving informal workers behind. The simulation shows that a significant social assistance helps households recover and reduces poverty. Still, informal workers who are excluded will recover at the slower pace than formal worker, deepening not only poverty but also income inequality as well. The government could potentially rely on digital payment, and on-line application sites that could be accessed via the internet and smart phones, check with government databases using unique national ID to filter out ineligible applicants.

In addition to income and wealth gap, the unequal access to technology also reflects the existing economic inequality. In 2017, only 3 percent of poor households with an average monthly income of less than 16,667 baht owned a computer with internet connection. During the pandemic, some businesses allowed their employees to work from home, similar to school and university that shift from on-campus to online classes. This widens the existing large digital divide, limiting the opportunities to work and learn, and even to supplement their income by engaging in the platform economy.

With the existing unequal distribution of income and wealth, active interventions are needed to protect those vulnerable, create an equal opportunity for all, and enhance Thailand's economic prospects.

## **(6) Possible solution to solve Wealth gap and income gap**

As income and wealth disparities in Thailand would dampen Thailand's long-term economic growth while increasing its economic vulnerability, a policy aimed to tackle both income and wealth inequality is needed. There is no one simple solution but these measures are possible. At this stage EABC is not advocating any specific solution or measure, but does advocate recognising the issue and putting in place measures to deal with it.

### **(a) Tax and transfer systems**

Taxes on wealth could be emphasized not only on stock of wealth like land, but also on return from capital income as well. The government could increase inheritance tax to relatively high level like other countries. A clear and transparent system is needed to ensure that holdings of offshore wealth are effectively taxed. The indirect taxes like VAT that charges 7 % for all should be exempted for basic commodities to benefit lower-income earners as consumption-related taxes are relatively high for them.

### **(b) Well-designed Labor market policies and institutions**

The minimum wage could be set to a relatively high level to narrow the distribution of labor income, thus raising workers' productivity, and translating into higher-quality service offered by businesses. Job protection has to be reformed to make permanent and temporary contracts more even in their provisions. With shortages of labor in some occupation and the aging population, the labor

market needs special training for reskilling labor to get the right supply of skills, filling the shortages of talents and unleashing their potential. Special institution could come into a role to provide vocational training, assistance in the job search process, and support micro-entrepreneurs or independent workers. Childcare support has to be provided to increase female labor participation.

### **(c) Comprehensive welfare systems**

Populations that are vulnerable must be better identified with swifter action, risk management, and alternative productive activities when the economy changes. A comprehensive welfare system is needed to empower low-income group. In Thailand, employees are required by the Social Security Act to make contributions 5% of their salary to the Social Security Fund on a monthly basis. The minimum salary to be calculated is THB 1,650 and the maximum is THB 15,000. Although social protection programmes is comprehensive, most workers tend to stay out of the system, as their employers or those who are self-employed avoid taxes and other government regulations to minimise short-term business costs. Therefore, addressing informality would give people more access to social protection program.

The proportion of social assistance beneficiaries in 2020 almost doubled compared to 2019. Over 80% of households benefitted from the Government emergency assistance programs introduced in 2020, with proportions approximating 90% among low-income households and those who experienced income shocks<sup>11</sup>.

Source: [TDRI, OECD](#)

<sup>11</sup> *Monitoring the Impact of COVID-19 in Thailand (worldbank.org)*

#### **(d) Role of infrastructure in economic development**

There are two types of infrastructure. Soft infrastructure is all the services which are required to maintain the economic, health, and cultural and social standards of a population such as rule and regulation, as opposed to the hard infrastructure which is the physical infrastructure of roads, bridges, transportation etc. Because of lack of sufficient public transportation systems in Thailand, urban transport heavily relies on passenger cars, resulting in massive congestion and air pollution. This brings about longer commuting time and worsening air quality, thus hampering business activity and people's health and well-being.

Government budget could be allocated heavily to infrastructure expansion. Not only to improve productivity, but also the prosperity of labour and business itself. The government could also reduce its role in economic production especially by state enterprises to public-private partnerships, giving a more pivotal role to the private sector. Even including public-private partnerships (PPPs), the share of infrastructure investment in Thailand's GDP is currently lower than that of regional peers. By getting rid of unnecessary regulations could also set aside more state budget for social and welfare spending and less for other purposes.

Massive investment would allow efficient financial circulation for society overall, especially for SMEs and tourism. Foremost to Thai investment is funding.

As of third quarter of 2021, the government has borrowed 1.5 trillion baht for handling the Covid-19 crisis. It needs additional loans to finance investments and the government should seek a legal adjustment to expand the public debt ceiling to more than 60% of GDP.

#### **(e) Education reform**

According to Sustainable Development Goals, goal 4 is to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. Thailand has achieved SDG goal 4 as indicated by net primary enrollment rate of 98.08 %, with literacy rate 98.14 %. Although Thailand is on track in achieving the goal, some significant challenges still remain as lower secondary education completion rate is quite low at 80.02 % in 2018.

Education and skills are key policy to ensure that every person enjoy access to high-quality opportunities to learn. This could be done by providing universal access to education, providing scholarship, narrowing quality gaps in education at all levels. Thai education has to be reformed. The learning system can include community school: a place and a set of partnerships between the school and other community resources.

The system should allow students to have critical thinking, excellence soft skill, and facilitate know-how transfer.

#### **(f) Price support for agricultural products**

Price support for agricultural products: By increasing the price of agricultural products, farmers, a vast group of people will become more able to support themselves.

**(g) Data as a basis of action**

World Bank's TEM also learns from the COVID-19 crisis by setting up a virtual or federated social registry to facilitate targeting and accountability on spending including harness available administrative data through greater interoperability, where the quality of data in some program and administrative databases may also need to be improved, and ensure to protect personal data and privacy and have a strong leadership from government in setting up this social registry. This is important for avoiding a slide into poverty. The World Bank's TEM noted Thailand's efforts to support lower income earners.

**(h) Policies to attract investors**

Policies to attract investors and stimulate business generally should result in 'trickle down' benefits to some degree. Whether trickle down works will depend on other reforms. Economic stimulation may be seen a precondition.



# Automotive

## SUMMARY OF RECOMMENDATIONS

### 1 Trade and EU - Thailand FTA Negotiations

- 1.1 Reaffirming our position in the 2019/20 European Business Position Paper, EABC & TEBA continue to support any possible development towards an EU - Thailand FTA. We encourage Thailand to strongly reaffirm its interest in the FTA and explore ways to re-engage in the negotiations.
- 1.2 Taxation should not be the only benefits of the EU - Thailand FTA. Thailand should also focus on reducing, eliminating, and preventing non-tariff barriers.
- 1.3 Develop the benchmarking report comparing with other FTA such as EU-Vietnam, Thai-EU and Thai-EFTA and use as the guideline for the EU-TH which will be resumed.

### 2 Technical Regulations

#### 2.1 Emission & Fuel and Road Safety

- It is recommended that Thailand implements the WP29 - 1958 Agreement by adopting UN Regulations and recognizing type approval certificates and test reports issued in accordance with UN Regulations to enhance safety and foster the auto industry's competitiveness, with priority to facilitate export performance.
- We urge Thailand to continue its active engagement in further development of the ASEAN MRA, which should provide recognition of UN Regulation. An acceleration of the ASEAN MRA timeline is highly encouraged.
- The product certification for automotive products should be simplified, transparent and open for full acceptance of relevant international certificates and document without additional testing and inspection, as well as allow the transfer of test report and license among affiliated companies.

#### 2.2 Emission & Fuel

- Align advanced emission standards with fuel quality improvement nationwide from 2024 for new vehicles.
- Accelerate enforcement of advanced emission standards to bring ultimate value of automotive industry to low emission's purpose, with recertification facilitation regulations.
- The exhaust emission standards must be in line with fuel standards for the efficiency of engine to generate lesser toxic emission; interdependencies between emission standards and biodiesel policy should be underlined e.g. compliance of low sulfur fuel (max 10 ppm) would be considered to avoid potential technical impacts of higher biodiesel blending (B7 and above).

- The actual exhaust emissions of in-use Diesel 1-ton Pickup Trucks and Commercial Vehicles (3.5-ton and above) should be more stringently measured the Periodic Technical Inspection (PTI). Compliance with the respective exhaust emission levels shall be more strictly enforces since they are the most polluting vehicles. All modifications to the vehicles original exhaust system shall lead to non-compliance.
- Adoption of a requirement for an earlier Periodic Technical Inspection (PTI) for in-use Diesel 1-ton Pickup Trucks and Commercial Vehicles (3.5-ton and above) starting from e.g. 3rd year of registration. This would also discover possible illegal modifications of the ECU parameter or exhaust cleaning system.
- Apply increasing rate of annual vehicle registration tax per year of vehicle age for Commercial Vehicles (3.5-ton and above) as a penalty for operating an older vehicle (starting from the 3rd year of registration).

### 2.3 Road Safety

- It is recommended that the Thai government investigates making a variety of vehicle safety measures mandatory. Most notably we recommend investigating possible ABS requirement for power 2-wheelers (No limited for engine cc.), eCall mandatory and 15 new safety features regulation given the fact that these are standard in several vehicles already today, and these technologies can support to reduce human errors to mitigate road accident in Thailand.
- Thai government to consider putting roadmap to harmonize national with international automotive standards (UN regulations).
- Propose to the Expressway Authority of Thailand to allow the Big Bike to use the Express Way.
- Adoption of a requirement for an earlier Periodic Technical Inspection (PTI) for all vehicles, starting from e.g. 3rd year of registration. This would also identify illegal modifications that could influence the road safety of the vehicle.

## 3 Taxation

- 3.1 Encourage the relevant authorities i.e. Customs Department, Office of Industrial Economics, Thailand Automotive Institute, to adopt a simple and flexible ‘Essential Manufacturing Process’ requirements, particularly for the EV industry. Manufacturers shall have the flexibility to choose, for the production of PHEV and BEV, any EV component (e.g. other than HVB, traction motor, BMS, DCU), as well as the suitable production processes to install in Thailand.
- 3.2 Continue to encourage clear and transparent rules, as well as the provision of sufficient lead-time. This is to strengthen Thailand’s ease of doing business and create a business environment conducive to investment in new technology.
- 3.3 Emphasize the importance of PHEV as a bridging technology that supports the drive towards electro-mobility and encourages that excise tax rates on PHEV shall be maintained at a low level.

- 3.4 Discourage any excise criteria that may lead to difference in the vehicle specification (such as size of fuel tank) between that in Thailand and that in European or international markets.
- 3.5 Discourage the setting up of an EV battery fund that would add any financial burden to the sale of EV.
- 3.6 Encourage the Government to review the VAT calculation for the sale of used vehicle
- 3.7 Encourage the Government to raise the ceiling of the deductible expense when buying the vehicles.

#### **4 Labour**

- 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**

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

#### **6. Electrification**

##### **6.1 Infrastructures Development**

- Develop public charging ecosystem with a clear roadmap and target.
- Incentivize and facilitate the installation of private charging infrastructure.
- Require new buildings, both residential and commercial, to install charging infrastructure.
- Maintain long-term low electricity cost for charging stations.

##### **6.2 Demand Stimulation**

- Create awareness to instil a sense of exclusivity for electric vehicle users.
- Replace government's fixed-route fleets to electric vehicles.
- Create monetary incentives for private users and corporate fleets to offset high technology cost.

- Create non-monetary incentives for electric vehicle users e.g. toll free, parking free, dedicated EV zones.

### 6.3 Supply Incentives

- Incentivize chargeable electric vehicles, connecting with local manufacturing in long term e.g. excise tax privileges.
- Develop EV supply chain with value added investment of local content to attract suppliers of key components.
- Simplify regulations or conditions impeding investment to attract more players to continue investing locally and maintain local industry competitiveness.

### 6.4 Standards and Regulations

- Implementation and acceptance of UN-R100 without addition of local adaptations.
- Accelerate the facilitation of future mobility for local homologation activities e.g. vehicle testing, certification, which would practically save time and cost.
- Proactive participation to related regional automotive committees e.g. AAC to demonstrate Thailand's leadership in the industry including the aspect of EV regulations.

### 6.5 Human Resource Development

- Enhance skilled technicians to competently cope with the future mobility industry.
- Incentivize public-private collaboration on curriculum for advanced technology of EV and battery as well as promote technology know-how transfer activities.
- Enhance competency of specialized authority to efficiently handle the advanced technology, testing and standards.

It is appreciated that the Royal Thai Government has various policies and measures which have enabled the country's automotive industry to achieve its current position. We are very keen to strengthen and support the competitiveness of Thailand's automotive position in the regional and global market by underlining our long-term commitment to the country. The success of the automotive industry contributes greatly to Thailand's GDP, creating and promoting jobs and developing the supply chain industry. In this paper will continue famous series of policy recommendations in 2019/2020 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).

## A. Trade and EU - Thailand FTA Negotiations

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

After the March 2019 Thai General Elections, the Royal Thai Government and the EU started to re-open EU – Thailand FTA talks, the EU considered this development sufficient to resume trade talks, leading to an agreement in June 2021 to resume negotiations. Trade talks are poised to take place in 2022 using a joint understanding document as the framework, which covers issues such as trade in goods, services, and investment, as well as intellectual property, e-commerce, and government procurement.

In addition, Thailand and EU have other FTA which is Thailand-EFTA (European Free Trade Association). In the first eight months of 2020, two-way trade volume amounted to \$8.39 billion, up 11.5% from the same period of last year, with Thailand enjoying exports worth \$7.05 billion, a rise of 52.3% year-on-year. Key export products included jewellery, watches and components, automobiles, and parts, while imported products included diamonds and precious stones, jewellery, silver bar and gold, watches and components, machines, and parts.

On November 2, 2021, Thailand and EFTA had a meeting to discuss the resumption of negotiations. Heads of delegation exchanged on recent domestic developments, the state of play of their respective domestic procedures, the scope of the negotiations as well as on the next steps towards their resumption. Discussions were constructive and parties agreed to continue working together on the remaining steps required to resume FTA negotiations.

With regard to the EU-Thailand FTA, the negotiating parties are currently working on a mandate to confirm the joint understanding of the framework for the FTA negotiations. Afterwards, this mandate will be submitted to the Thai International Economic Policy Committee (IEPC) and the Cabinet for their review and approval. Upon approval, stakeholders may expect to see a summary of the framework in the first half of 2022.

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 2019/20 European Business Position Paper, EABC & TEBA continue to support any possible development towards an EU - Thailand FTA. We encourage Thailand to strongly reaffirm its interest in the FTA and explore ways to re-engage in the negotiations.
2. Taxation should not be the only benefits of the EU - Thailand FTA. Thailand should also focus on reducing, eliminating, and preventing non-tariff barriers.

3. Develop the benchmarking report comparing with other FTA such as EU-Vietnam, Thai-EU and Thai-EFTA and use as the guideline for the EU-TH which will be resumed.

## B. Technical Regulations

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

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

business operator. TISI has planned to transfer their surveillance process to the accredited Inspection Body.

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

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

### Recommendations:

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

## (1) ASEAN Mutual Recognition Arrangement (MRA) for Automotive Products

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

On 16 January 2021, ASEAN member states signed the ASEAN Mutual Recognition Arrangement on Type Approval for Automotive Products (APMRA) which aims to eliminate duplicate testing requirements on 19 automotive products in the region. Under the APMRA, all ASEAN member states must accept or recognise the conformity assessment results issued by the Listed Technical Services (i.e., those authorised and accepted by all ASEAN member states or the ASEAN Automotive Committee).

The APMRA will enter into force after all ASEAN member states complete their ratification or at the latest by 16 January 2022. A guidance document for the implementation of APMRA is expected to be issued in Q4, 2021 to facilitate a smooth implementation.

### Recommendations:

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

## (2) Progression on Advanced Emission and Fuel Standards

In 2020, Thailand was ranked 34th amongst countries with highest pollution levels globally. PM2.5 smog levels during the slash-and-burn season in Chiang Mai can reach nearly 20 times that of the level deemed "safe" by health officials. According to International Association for Medical Assistance to Travellers (IAMAT), Thailand's annual PM2.5 average is 26 µg/m<sup>3</sup>, more than two times higher than the World Health Organization's 10 µg/m<sup>3</sup> recommended maximum. Road transport in Bangkok is a major contributor to over 50% of PM2.5 in the air. In addition, NO<sub>x</sub> which is 40% came from road transportation and its high concentration of NO<sub>2</sub> can irritate airways in the human respiratory system. WHO recommended NO<sub>x</sub> concentration not over 10 ppb its pollutant in Bangkok is increasing year by year. Over 10 million vehicles are registered in Bangkok alone, total vehicle sales and production is expected to increase considerably in Thailand. As a result, it may bring of happiness and economic deterioration, environment impact and serious problem of public health.

Emission-free mobility is part of Thailand's long-term vision towards global climate protection, air quality control, and overall sustainability as stated in the recent United Nations Climate Change Conference or COP26 in November 2021, Glasgow. Thailand has resolved the country would perform carbon neutrality and net-zero emission by 2050 and 2065 respectively. Driven by global climate action, Thailand's energy policy has to be adopted towards sustainability transformation, which would play significant role in the hope of finding sustainable solutions to hazardous particles in the atmosphere, and motivating all stakeholders to take part in the process for better results. The adoption of National Energy Plan 2022 has been agreed to consolidate the 5 sub-plans together at once including Power Development Plan (PDP), Alternative Energy Development Plan (AEDP), Energy Efficiency Plan (EEP), Gas Plan and Oil Plan. For transportation, government's focus would include the energy efficiency for more than 30% and energy transition towards decarbonization. See Energy Chapter for more.

To tackle the air pollution concern, cleaner emission standards (EURO 5) and fuel quality (low sulfur fuel < 10 ppm) are to be introduced nationwide by 2024, endorsed by National Environment Board. Current availability of low sulfur 10 ppm fuel is around 17% (500 million liters/month) at PPT and Bangchak fuel stations mainly in Bangkok and its vicinity. The fuel can possibly cover nationwide by 2024 under Ministry of Energy (MoE) enactment with the advance technology availability. Gasohol E20 is base grade while Gasohol E10 and E85 are optional. For biodiesel, B10 is base grade and B7 & B20 are optional from 2020. B7 availability, however, is potentially subject for discontinuation in future.

EABC & TEBA therefore suggest that the government to incentivize and expand the good fuel quality nationwide as to enhance the new advance emission cars and the in-use vehicles in terms of emission reduction. Our member companies are open and ready to offer expertise and technical knowledge in order to collaborate with the government to promote constructive discussions on the root causes of air pollution in Thailand and identify practical ways to solve sources of pollution.

**Recommendations:**

1. Align advanced emission standards with fuel quality improvement nationwide from 2024 for new vehicles.
2. Accelerate enforcement of advanced emission standards to bring ultimate value of automotive industry to low emission's purpose, with recertification facilitation regulations.
3. The exhaust emission standards must be in line with fuel standards for the efficiency of engine to generate lesser toxic emission; interdependencies between emission standards and biodiesel policy should be underlined e.g. compliance of low sulfur fuel (max 10 ppm) would be considered to avoid potential technical impacts of higher biodiesel blending (B7 and above).



### (3) In-Use Vehicles Inspection

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

#### Recommendations:

1. The actual exhaust emissions of in-use Diesel 1-ton Pickup Trucks and Commercial Vehicles (3.5-ton and above) should be more stringently measured the Periodic Technical Inspection (PTI). Compliance with the respective exhaust emission levels shall be more strictly enforces, since they are the most polluting vehicles. All modifications to the vehicles original exhaust system shall lead to non-compliance.
2. Adoption of a requirement for an earlier Periodic Technical Inspection (PTI) for in-use Diesel 1-ton Pickup Trucks and Commercial Vehicles (3.5-ton and above) starting from e.g. 3rd year of registration. This would also discover possible illegal modifications of the ECU parameter or exhaust cleaning system.
3. Apply increasing rate of annual vehicle registration tax per year of vehicle age for Commercial Vehicles (3.5-ton and above) as a penalty for operating an older vehicle (starting from the 3rd year of registration).

### (4) Road Safety

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

Thailand considers these concerns and finally release the announcement on behalf of Thai Department of Land Transport on May 15, 2021 that from 2024 onwards the ABS will be mandatory on all new motorcycles and from 2026 onwards the existing motorcycles and scooters with engine size  $\geq 125$  cc. will be required to have ABS as well.

The Expressway Authority of Thailand announced in 2012 that motorcycles (2-wheelers) are not allowed to use toll express ways. The reason is mainly due to safety concerns. However bigger, modern motorcycles are much different than traditional 2-wheelers and are equipped with advanced safety features. Hence, suggest that such Big Bikes should be granted an exemption for use on Expressways (Big Bikes could be defined as motorcycles with big engine size, e.g.  $\geq 500$  cc). Users of such modern bikes potentially ride a long way or upcountry and would very much like to use the toll-way to get to their destination. Changes to this regulation could help domestic sales as well as export of Big Bikes.

To reduction of the number of fatalities and the mitigation of the severity of injuries caused by road accidents due to faster arrival of the emergency services to the accident scene, eCall is the solution. The European Commission has mandated the installation of the 112-based eCall in-vehicle alarm system in all new M1 and N1 vehicles (passenger cars and light-duty vehicles, respectively) sold in the EU member countries from March 31, 2018 onward. The result is great that getting immediate information about a collision and pinpointing its exact location cuts emergency services' response time by 50% in rural and 40% in urban areas. Road collisions cost the EU around €160 billion/year, but if all cars were equipped with the eCall system, up to €20 billion could be saved annually.

Therefore, we suggest that Thailand should follow this mandatory as it already showed the great result from EU.

Furthermore, a suite of 15 new safety technologies will become mandatory in European vehicles to protect passengers, pedestrians and cyclists in middle of 2022. The European Commission expects that the proposed measures will help save more than 25,000 lives and avoid at least 140,000 serious injuries by 2038.

The new mandatory safety features include:

- i) For cars, vans, trucks and buses: warning of driver drowsiness and distraction (e.g. smartphone use while driving); intelligent speed assistance (ISA); reversing safety with camera or sensors; data recorder in case of an accident ("black box"); alcohol interlock installation facilitation; advanced driver distraction warning systems; emergency stop signals; and accurate tyre pressure monitoring.

- ii) For cars and vans: Lane-keeping assistance; advanced emergency braking; crash-test improved safety belts; and enlarged head impact protection zones capable of mitigating injuries in collisions with vulnerable road users, such as pedestrians and cyclists; and pole side impact occupant protection.
- iii) For trucks and buses: specific requirements to improve the direct vision of bus and truck drivers and to remove blind spots; and systems at the front and side of the vehicle to detect and warn of vulnerable road users, especially when making turns.

There are some assessments of ASEAN NCAP (New Car Assessment Program for Southeast Asian Countries) that aligned with EU new regulation including advanced emergency braking systems; emergency lane-keeping systems; head protection technology; pole side impact protection; however, it's not the regulation. So, we also suggest like eCall mandatory that follow the latest regulation from Europe.

#### **Recommendations:**

1. It is recommended that the Thai government investigates making a variety of vehicle safety measures mandatory. Most notably we recommend investigating possible ABS requirement for power 2-wheelers (No limited for engine cc.), eCall mandatory and 15 new safety features regulation given the fact that these are standard in several vehicles already today, and these technologies can support to reduce human errors to mitigate road accident in Thailand.

2. Thai government to consider putting roadmap to harmonize national with international automotive standards (UN regulations).
3. Propose to the Expressway Authority of Thailand to allow the Big Bike to use the Express Way.
4. Adoption of a requirement for an earlier Periodic Technical Inspection (PTI) for all vehicles, starting from e.g. 3rd year of registration. This would also identify illegal modifications that could influence the road safety of the vehicle.

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

## C. Taxation

### (1) Customs Free Zone's Rules

The Customs Free Zone (CFZ) and Free Trade Zone (FTZ) have played an important role in attracting investment and develop Thailand's industrial sector. In order to utilize CFZ & FTZ duty privileges, manufacturers must ensure that their goods, which are produced in the CFZ/FTZ, undergo "Essential Manufacturing Processes". Details of the "Essential Manufacturing Process" requirements for each good are stipulated by the Office of Industrial Economics (OIE).

For example, in order for passenger cars with internal combustion engines (ICE) to enjoy CFZ/FTZ duty privilege, the production of such passenger cars must generally consist of 4 essential manufacturing processes, namely, body welding, body painting, assembly, and quality testing, for at least 2,000 units.

For plug-in hybrid electric vehicles (PHEV) and battery electric vehicles (BEV), the production of such passenger cars must generally use at least one locally-produced EV components (i.e. high-voltage battery (HVB), traction motor, battery management system (BMS), or drive control unit (DCU)), and undergo assembly, and quality testing, for at least 2,000 units.

While the Essential Manufacturing Process requirements aim to ensure that production activities that are chosen to be installed in Thailand are sophisticated and significant, setting rigid and inflexible criteria could undermine Thailand's role as the automotive manufacturing hub, especially amid the transition towards electro-mobility. This is due to the fact that electrification technology is still very much fluid. There are a wide range of different technologies emerging in the field of electric vehicles and these technologies are changing rapidly.

In order to maintain the attractiveness of Thailand as an automotive hub, it is important that the production requirements are sufficiently flexible to accommodate the rapid change in EV technology.

We would reiterate our position that the relevant manufacturers, including European OEMs, shall be closely consulted when contemplating the CFZ/FTZ rule, with a view to set the ‘Essential Manufacturing Process’ requirements to be sufficiently simple and flexible.

For instance, in the early stage, for the production of PHEV and BEV, the government may consider not to require local production of EV components. In the next stages, when technology becomes a bit more stable, the government may choose to allow manufacturers to choose any EV component (e.g. other than HVB, traction motor, BMS, DCU), as well as the suitable production processes to install in Thailand.

In addition, amid the trend towards electro-mobility, the requirements for ICE passenger cars to maintain body welding and painting processes for at least 2,000 units can be burdensome, particularly for small OEMs. As the ICE segment tends to shrink over time while xEV segment will greatly expand, the government shall consider allowing the body welding and painting processes of xEV passenger cars to be counted towards such threshold.

A simple and flexible set of Essential Manufacturing Process requirements for the EV industry, reflected above, becomes even more relevant considering that neighbouring countries, e.g. Malaysia, Indonesia, and Vietnam, have recently stepped up their effort in attracting EV manufacturers to their markets.

It goes without saying that EABC & TEBA continue to encourage clear and transparent rules, as well as enough lead-time for the industry to adjust. This strengthens

Thailand’s ease of doing business and creates a business environment conducive to investment in new technology.

#### **Recommendations:**

It is recommended to encourage the relevant authorities i.e. Customs Department, Office of Industrial Economics, Thailand Automotive Institute, to adopt a simple and flexible ‘Essential Manufacturing Process’ requirements, particularly for the EV industry. Manufacturers shall have the flexibility to choose, for the production of PHEV and BEV, any EV component (e.g. other than HVB, traction motor, BMS, DCU), as well as the suitable production processes to install in Thailand.

Continue to encourage clear and transparent rules, as well as the provision of sufficient lead-time. This is to strengthen Thailand’s ease of doing business and create a business environment conducive to investment in new technology.

## **(2) Excise Tax Restructure**

In 2021, the National Electric Vehicle Policy Committee (NEVPC) set a very ambitious vision that in 2035 all newly registered passenger cars and motorcycles shall be Zero Emission Vehicle (ZEV). Excise tax is seen as one of the main policy tools that will be used to steer Thailand towards such vision.

Given the electro-mobility trend, along with Thailand’s ZEV vision, the Excise Department has indicated that the excise tax table will be adjusted in a direction that supports new automotive technologies such as electrification and

autonomous driving, with a view to promote Thailand as the manufacturing hub of such technologies. The revised tax table/structure is expected to be announced in 2022 and become effective in 2026.

In addition to the revision of the excise tax table, the Excise Department is tasked, by the NEVPC, to design incentive schemes that will help promote the use of ZEV. Such schemes are expected to provide a big stimulus so that the demand for fully electric cars can jump from under 2,000 units in 2021 to 225,000 units per year as targeted in 2025.

We support Thailand's electrification vision and would point out that, although the 2035 vision focuses on ZEV, promoting PHEV can be an effective approach that helps Thailand to realize such goal. The promotion of PHEV is particularly important in the medium term (i.e. until 2030) when the EV infrastructure is being developed. As such PHEV shall be seen as a bridging technology and shall be promoted alongside with BEV/FCEV. Promoting both technologies leads to a much broader customer base, and hence, enables faster EV adoption. In this relation, we encourage that excise tax for PHEV be maintained at relatively lower rates than ICE or HEV.

It would also point out that any criteria that may lead to difference in the vehicle specification (such as size of fuel tank) between Thailand and international markets shall be avoided. Consistent with the position expressed in the previous paper, recommended discourage the setting up of an EV battery fund that would add any financial burden to the sale of EV.

Nonetheless, EABC & TEBA fully support the Excise Department's endeavour to early engage relevant automotive stakeholders in the reconsideration of the excise tax table. This has allowed the industry to provide valuable input regarding technology trends and manufacturing capability.

#### **Recommendations:**

1. It is recommended to emphasize the importance of PHEV as a bridging technology that supports the drive towards electro-mobility and encourages that excise tax rates on PHEV shall be maintained at a low level.
2. Discourage any excise criteria that may lead to difference in the vehicle specification (such as size of fuel tank) between that in Thailand and that in European or international markets.
3. Discourage the setting up of an EV battery fund that would add any financial burden to the sale of EV.

### **(3) VAT on Used Cars and Corporate Income Tax Deductibles**

Thailand's automotive market and industry continue their recovery from sluggish demand, supply chain disruption and the semi-conductor shortage, which resulted from the COVID-19 pandemic. To support the recovery, the two stimulus policies described in the previous paper become even more relevant.

Firstly, it was suggested that VAT be applied equally to the sale of used cars whether by registered companies or private entities. This is to level the playing field and induce competition into the business. In this relation, a concept of differential VAT, where the business entity would only pay VAT on the profit that is made through the used car transaction shall be considered.

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

#### **Recommendations:**

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

## **D. Labour**

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

We support the Royal Thai Government's policy on promoting vocational training e.g. mechatronics. Efforts to increase graduates in areas of new technology via higher education curriculum including engineering technical training e.g. electricians, electronics, software engineering, IT, to support Electrified Vehicle (EV), Autonomous Vehicle (AV). In addition, we encourage public-private internships for at least 6 months instead of 3 months before graduation. In order to maintain sustainability for qualified graduates above, we highly recommend the promotion of international dual study programs; for example, overseas expert invitation to conduct local trainings.

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

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

**Recommendations:**

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

**E. Investment****(1) Licencing Facilitation Act (LFA)**

The Thai business environment is one of Southeast Asia's most favourable for investment in many but not all sectors. Thailand's ease of doing business has improved on some key criteria over the years. This progress was driven by developments in the indicators dealing with construction permits, starting a business, getting electricity and resolving insolvency. Further developments can be made to cope with greater competition and comprehensive improvements in neighbouring countries' business environments such as a complicated process of registering property or starting a business. Overall, Thailand is an attractive market to do business in, however the country's competitiveness still lacks certain more advanced aspects, such as infrastructure, technologic advancement, and workforce skills to attract higher value-added investments in R&D and advanced technologies.

We welcomed the implementation of the LFA, which helps industry to obtain government licenses more easily in many sectors. Since the Licencing Facilitation Act has become effective, relevant authorities are required to

produce a licencing manual for the public and disclose the processes as well as evaluate such implementation on regular basis. For many agencies and sectors this has been a positive contribution to the foreign business community, where extensive paperwork is normally required. However the LFA itself has no digitalisation targets. As such, this would defeat the purpose of having LFA. We highly recommend Thailand to cooperate with EABC and TEBA to review the processes.

**(2) BOI Investment Scheme**

Foreign investment is important for the automotive sector. We welcome that Thailand's Board of Investment (BOI) continues to see the automotive sector as an important industry for the Thai economy. The cluster development policy aims to increase special economic development zones as well as to increase industrial competitiveness in areas with high potential as 10-target S-Curve industries using advanced technology, including next generation automotive of Thailand.

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

In April 2021, Thailand set new electric vehicle (EV) production target to be 30% of all new cars, or 750,000 out of 2.5 million total units by 2030. With the 50% goal, the number of annual EVs produced would increase to 1.25 million. The BOI tax incentives intensively involve exemption and reduction of corporate income tax as well as exemption of import duties of the raw materials for a certain period with certain conditions. However, for EVs, to boost the market competitiveness, the Excise Department has been applying an attractive excise tax rate of 0% during 2020- 2022 and 2% during 2023-2025, to electric powered passenger vehicles.

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

### (3) Green Technology

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

High requirements for cleaner environmental products bring significant gains to the economy. Clean technology not only benefits public health and the environment, it also attracts foreign investment to Thailand. Clean technology also often requires advanced technology, but this technology is not usually found in Thailand. The European automotive sector is well-known for its high environmental standards and is ready to assist Thailand to develop the green technology industry for the automotive sector.

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

#### **Recommendations:**

1. It is recommended that the Royal Thai Government ensures the transparency and monitors the effectiveness of the licensing grant process.



2. Safeguarding existing investments requires long-term support and true commitment from BOI, and clarity to investment promotion is required to avoid unnecessary delay to investment decisions.
3. BOI as business facilitation centre, should be consistent in relevant regulations and encourages the ease of investment climate as well as strong confidence towards investors.
4. Thailand should continue to raise standards for safety and environmental requirements in the automotive sector to help attract green technology and new investments.
5. We recommend the government continues dialogue with TEBA automotive working group about improving ease of doing businesses and consist of industry experts that can provide policy recommendation to boost Thailand's competitiveness.

## F. Electrification

With an increasing emphasis on reducing climate impact and fulfilling the Paris Agreement's 2050 targets or the EU Green Deal, countries around the world are realizing the urgency of decarbonizing the transportation market, which accounted for a quarter of global greenhouse gas (GHG) emissions in 2019. Governments and businesses in ASEAN have a mutually beneficial opportunity to form and engage in the development of a considerably decarbonized land transport industry. Meanwhile, the Covid-19 pandemic has altered people's working and commuting habits, offering an opportunity to shift the direction of how land transportation environments develop in ASEAN's major cities.

Based on Thailand's footprints of automotive industry development plan towards electro-mobility, several existing roadmaps were reshaped. Recent United Nations Climate Change Conference or COP26 in November 2021, Glasgow, the country declared ambitious commitment for the national CO2 reduction plan, aiming for CO2 neutrality and net zero emission by 2050 and 2065 respectively. The plan also accelerates CO2 reduction from 25% to 40% by 2030 per Nationally Determined Contributions (NDC), reiterating the government's preparation for sustainable energy for future mobility. De-carbonization and electrification are remarkably motivated.

The National Electric Vehicle Policy Committee (NEVPC), in early 2021, approved Thailand's vision as a global production base for electric vehicles and parts as strategic commitment towards EV industry adoption in Thailand. National target for zero emission vehicle (ZEV) production and registration is significantly accelerated. The production target aims for 10%, 30% and 50% by 2025, 2030 and 2035 respectively, whereas the new ZEV registration would spring up from 30% and 50% to 100% at the same timeline. The new target also covers several types of vehicles including personal car, pick-up, motorcycle, bus and truck, in attempts to accelerate demand for EVs while to reduce carbon emissions. The packages include tax holidays, financial support and other non-tax privileges. More EV ecosystem will be standardized such as smart grid system to match the future demand of electricity generation.

Thailand is one of the leading EV markets in Southeast Asia. According to accumulated vehicle registration figures by Department of Land Transport from Jan – Aug 2021,

there are 28,866 plug-in hybrid cars and 3,446 battery electric cars, exponentially growing by 4,772 units and 1,242 units respectively from 2020. However, there are only 693 charging stations consisting of 1,511 AC chargers and 774 DC chargers operated nationwide, according to the Electric Vehicle Association of Thailand as of Sep 2021. More public charging stations are required to support the growing number of electric vehicles and reduce “range anxiety” for customers.

In order for the market to take the next step to full electrification, Thailand will need to develop an electric vehicle ecosystem, particularly to overcome consumer concerns. Within the government-owned fleets of the different Ministries, chargeable electric vehicles (i.e. PHEV and BEV) should be used more frequently to obtain daily use case experience in addition to serving as a role model for society. In addition, all new buildings should be regulated to provide EV friendly facilities such as charging wall boxes or parking lots dedicated for electric vehicles only. The lack of standardization is one of the obstacles that could slow down the growth of electric vehicle in Thailand. Clear standards will make it easier for suppliers, manufacturers, and service providers to conduct business.

Before a sustainable market demand for electrified vehicles can be established, strong government support on tax advantages or other incentives for both manufacturers and customers are required. These can be aimed at reducing total cost of ownership for favourable usage, incentivizing chargeable electric vehicles production as well as simplifying to restrict regulations or conditions impeding investment. The incentives and measures must be connected with local manufacturing in long term approach to avoid industry competitive disadvantage, in

order to safeguard the transfer of know-how and advanced technology to Thais, as well as strengthen the supply industry tier 1 and tier 2 in the industry.

With a clear national roadmap and collaboration between government agencies with clear timeline and integrated responsibility, as well as sufficient economy of scale from enough establishments of charging infrastructure, electric vehicle distribution, a high-skilled workforce, and demand from the customers, the OEMs would be able to efficiently accelerate the production of battery electric vehicles in Thailand.

It is recommended to encourage the Royal Thai Government’s policy to improve national energy efficiency and environment using electricity to power vehicles. The policy on chargeable electric vehicles promotion will bring innovation and improvement to Thailand’s environmental standards which the European companies upheld values for sustainability and social responsibility. We stand ready to collaborate the government on policy making, execution and technical support.

#### **Recommendations:**

##### **Infrastructures Development**

1. Develop public charging ecosystem with a clear roadmap and target.
2. Incentivize and facilitate the installation of private charging infrastructure.
3. Require new buildings, both residential and commercial, to install charging infrastructure.
4. Maintain long-term low electricity cost for charging stations.

### Demand Stimulation

1. Create awareness to instil a sense of exclusivity for electric vehicle users.
2. Replace government's fixed-route fleets to electric vehicles.
3. Create monetary incentives for private users and corporate fleets to offset high technology cost.
4. Create non-monetary incentives for electric vehicle users e.g. toll free, parking free, dedicated EV zones.

### Supply Incentives

1. Incentivize chargeable electric vehicles, connecting with local manufacturing in long term e.g. excise tax privileges.
2. Develop EV supply chain with value added investment of local content to attract suppliers of key components.
3. Simplify regulations or conditions impeding investment to attract more players to continue investing locally and maintain local industry competitiveness.

### Standards and Regulations

1. Implementation and acceptance of UN-R100 without addition of local adaptations.
2. Accelerate the facilitation of future mobility for local homologation activities e.g. vehicle testing, certification, which would practically save time and cost.

3. Proactive participation to related regional automotive committees e.g. AAC to demonstrate Thailand's leadership in the industry including the aspect of EV regulations.

### Human Resource Development

1. Enhance skilled technicians to competently cope with the future mobility industry.
2. Incentivize public-private collaboration on curriculum for advanced technology of EV and battery as well as promote technology know-how transfer activities.
3. Enhance competency of specialized authority to efficiently handle the advanced technology, testing and standards.

## Cross-Sectoral Issues (CSI)

### SUMMARY OF RECOMMENDATIONS

#### 1. Tax Regime – Competitive, Efficient, Inclusive and Fair (15 items, 4 here)

- 1.1 Implement a number of efficiency enhancements
- 1.2 Reduce then remove domestic withholding tax
- 1.3 Make timelines for tax audits
- 1.4 binding tax rulings are needed

#### 2. Foreign Investment (3 Items)

- 2.1 Take a bold approach to List 3 of the FBA and reform the List 3 decision-making process
- 2.2 Review other consequential legislation impacting allowing foreigners to do certain jobs
- 2.3 Maintain FBA standard

#### 3 The Legal System (7 items; 6 here)

- 3.1 Promote ‘Rule of Law’
- 3.2 Law Making and the Consultation Process need better practices
- 3.3 Court reporting enhancement; Court processes to be more digital
- 3.4 Arbitration should be available for all categories of government contracts
- 3.5 Fast Track Regulatory Reform – implement the changes from the Guillotine phase.
- 3.6 Inappropriate laws should be removed.

#### 4 Work Permit & Visa – focus on skilled workers (several items)

- 4.1 For Business Visitors – change ‘work’ definition to make it in line with APEC business mobility principles and use the RCEP Business Visitor concept, allow a wide range of activity with no work permit.
- 4.2 For those living and working in Thailand, a range of specific changes is needed
- 4.3 For smart visa, make it less cumbersome and more attractive.
- 4.4 Ultimately remove TM.30 (any remaining parts to be done on-line); TM.6 via on-line where needed or eliminate; 90 day reporting only for change of residence.
- 4.5 ILO standards need to be respected, action is needed.

## 5 Anti Corruption (3 items)

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

## 6 Sustainability (3 items)

- 6.1 Make education about the inherent business value of sustainability better understood
- 6.2 Sustainability integration is needed; built-in, not bolted on in all areas of economic activity
- 6.3 Recognise global influences in sustainability and harmonise

Cross-Sectoral Issues (CSI) are those which impact a number of sectors or are economy-wide. This chapter has been re-organised into Clusters, or topic groups, which for the purposes of the 2022 European Business Position paper are:

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

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

#### (1) Overall approach and specific aspects

Since the tax systems significantly impact companies’ ease of doing business, the EABC urges the Thai government to develop tax systems that foster business investment and economic growth. Keeping tax rates (for corporates

and individuals) at reasonable levels, administering tax law in a consistent and transparent manner and prompt information sharing with the public, will help the private sector in going about their business as well as formalizing robust business. This in turn would expand the tax base and increase tax revenue. Both business and government can benefit from tax systems which are simple to administer and have reasonable compliance costs.

#### Recommendations – Tax regime

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

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

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

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

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

Currently, the Government provides withholding tax reduction from 3% and 5% to 2% if the payments are made via the e-Withholding Tax system until 31 December 2022. This withholding tax reduction is a move in the right direction which should be considered to be permanent and extend to cover all payments.

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

### **2. Increase underestimated mid-year CIT threshold and expand the scope of justifiable reasons for underestimated mid-year CIT**

Companies are subject to 20% surcharge on the mid-year CIT shortfall resulting from underestimating annual net profits for mid-year CIT calculation purposes. The allowed 'margin for error' is currently 25% of the actual net profits at year-end. Given the

current economic situation, revenue may significantly fluctuate due to factors outside of businesses' control. The 25% threshold should be increased to encourage businesses to estimate their net profits for mid-year CIT purposes accurately but without a fear of being subject to exorbitant surcharges (which often leads companies to choose to rely on the 'safe harbour' and pay the half of the CIT paid for the prior year even if they ultimately end up in a tax refundable position, this creating unnecessary cash burden).

Concurrently, consideration should be given to expanding 'justifiable reasons' prescribed for underestimated mid-year CIT to include the said unpredictable events, i.e., Covid-19 pandemic related lockdown, close of country borders, or any commercially explainable reasons. This will also reduce the amount of CIT overpayment to be further discussed below.

### **3. 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. Should a refund be requested by a taxpayer, tax audit and refund processes should adhere to a clearly defined timeline. This point will be further discussed below.

#### **4. 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.

#### **5. Incentive for tax audits**

In the event of a tax audit, surcharges could run continuously until the tax audit is completed, resulting in huge amount of surcharges due to lengthy tax audit process. This means that the Revenue Department has no incentive to close tax audits in a timely manner. The introduction of certain measures such as progressive reduction of surcharges (and penalties) based on the length of a tax audit process or interest payable by the Revenue Department to the taxpayers on the amounts of tax refund owed to taxpayers, would encourage tax officers to expedite tax audit process. Precedents for such measures exist in other countries.

#### **6. Decrease in the monthly surcharge of 1.5% and availability of deduction for surcharge**

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

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

#### **7. VAT and withholding tax reporting obligations for SMEs and non-resident VAT registrants**

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, or non-resident VAT registered e-service providers that do not have any personnel in Thailand, this is an administrative burden and should instead, be limited to quarterly reporting obligations.

#### **8. Binding advance tax rulings**

Before entering into a transaction, taxpayers generally consider the tax consequences which may arise. Where the numbers involved are substantial and the

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

Similar to tax audits, there should also be a specific timeline for the consideration and responses given to the tax ruling requests. The taxpayers who act in good faith should be protected from a negative tax ruling issued, e.g., reduction or exemption of surcharges and penalty, with an unreasonable delay.

### **9. Consistent and accurate interpretation of legislation by Revenue Officers**

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

### **10. Legislative incentives vs execution of incentives**

There are many beneficial incentives from which taxpayers can take advantage, however, in certain instances, the execution and implementation of the

incentives have impacted on their success. For example, to take advantage of the accelerated 200% deduction for R&D expenses, the project must be examined and approved by the National Science and Technology Development Agency (NSTDA). In practice, however, it is very difficult to obtain timely approval from the NSTDA and there are no clear guidelines on which projects the NSTDA will likely approve. On average, the NSTDA can take six months or longer before granting their decision. This is an example to illustrate that legislating an incentive is not enough to drive investment. Clear and reliable implementation and execution of such incentives is imperative, without which, the incentive will be ineffective.

Additionally, the Revenue Department should develop a platform or a webpage where taxpayers can easily check available tax incentives or measures for the ease of

### **11. Extension of loss carried forward utilization**

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



may also be more inclined to inject and increase the capital of companies with tax losses since they know such tax losses will not be lost in the short term.

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

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

### **12. Eliminate the requirement for a Thai corporate buyer to deduct Thai tax from a foreign seller's gain realized from the sale of shares**

Foreign taxpayers should not be required to pay Thai income tax from the sale of shares to a Thai corporate buyer. Some double tax treaties in force with Thailand allow relief from Thai capital gains tax from the disposal of shares by a foreign person, but many do not.

With all other things equal, a foreign seller would generally prefer to sell a target company's shares to any buyer that is not Thai. This rule creates a clear and huge disadvantage to Thai companies who want to expand offshore since there would be a shortage of potential sellers and target companies.

We are not aware of any other country that would assess tax on capital gains realized from the sale of non-Thai shares sold by a non-resident of Thailand

purely based on the location from where the payment is made.

### **13. Future tax reforms or change of laws**

Change in tax policy and legislative amendments must be transparent, announced with sufficient notice and subject to a meaningful public consultation process. Public consultations should be conducted with relevant stakeholders to understand compliance challenges with the aim to balance the government and taxpayers' benefits. Once the legislation process is completed, a grace period/advance notice must be provided to allow affected taxpayers in the compliance preparation.

### **14. eCommerce tax**

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

### **15. Customs**

Customs recommendations are covered in the Transport & Logistics Chapter.

## **B. Foreign Investment**

### **(1) Basis of regulation**

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

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

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

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

- Broadcasting – control and nationality factors
- Foreign Dominance Notification (telecoms) – a shopping list of connecting factors including control, indirect shareholding, banking relationships, staff etc, see also Digital Economy/ ICT Chapter.
- Insurance with some caps at 25% but in practice different – the Insurance chapter has more details..

- Aviation services from January 2017, relying on a 47 year old Decree – restricts nationality, control, shareholding for an Air Operating Licences (AOL), on safety grounds.
- Certain other specific cases.

## (2) The wider picture of restrictions on participation

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

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

Subject	Effect	Regulatory source
<i>Business activities of entities</i> (eg companies) with more than 49% foreign shareholding	Restricts the business activity of the company using three lists. List 3 has unnecessary restrictions.	Foreign Business Act AD 1999. Foreign Business Licence (s.7) Under IPA (the basis of BOI promotion) Foreign Business Certificate (s. 12)
<i>Professions</i> which may not be undertaken by foreigners	Prohibits foreigners (individuals) from carrying out 39 professions. JFCTT has identified 8 of interest	AD 1979 Decree; April AD 2020 Notification groups these into 4 categories
<i>Professional</i> licensing or permits at sector or individual professional level.	An additional barrier which is often overlooked by regulatory moves to liberalise professions.	Various sector or profession-specific laws – eg Engineers Act, Accountants Act, Lawyers Act which typically set up a professional licensing authority.

The 39 professions not open to foreigners under a 1979 Decree are compounded by the additional filter of profession-specific law and regulation.

The 1979 Decree was replaced by an April 2020 Notification which retained the same 39 professions but grouped them into four categories, with the idea of better supporting possible liberalization via treaties or Arrangements.

The situation is complex as each profession has its own regime and issues, and sector-specific legislation apart from the 2020 Notification. EABC has identified some eight professions to open and in mid 2018 has made an analysis and recommendations about removing restrictions. Accounting has some special treatment: EABC recommends the removal of at least 7 from the list of 39.

### **(3) Opening up the Foreign Business Act lists; related regulation**

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

Press statements over the years have indicated other releases being imminent from time to time, but it is the four which are the reality. In 2020 three areas were announced for removal from List 3:

- Telecommunications business (type 1)
- Treasury center activities (intra-group FX)
- Software development business.
- and in late 2021 three additional areas were added for possible removal;
- Space Rental such as for ATM or vending machine
- Corporate guarantee business
- Admins/Business management (Back Office)

In 2020 EABC make a detailed written submission and held a dialogue session, recommending suspending List 3 for three years, to support economic recovery, keep jobs and businesses by allowing for restructuring and in the meantime permanently removing from List 3 certain key sectors (or activities). At the end of that period, the suspension would end but the permanent removals would not be re-introduced. This followed the 2018 submission about removal of items from List 3, described in the 2019/2020 European Business Position Paper.

It has become apparent that there is an issue with the consultation and decision-making process about List 3. Rather than a proper public hearing (where all can hear the views of others) with the prospect of consensus, a strong local view can have the effect of veto-ing the views of others, including other government agencies.

EABC recommends a bold approach to the FBA with a different mindset and a thorough review then reform of the List 3 review process and decision-making about List 3. See more about consultation and public hearing elsewhere in this chapter.

As for accounting the following suggestion is in keeping with Thailand as a high services hub.

Philippines and India are hubs for regional accounting and other back office services. Due to restrictions on what services foreign accountants are permitted to provide in Thailand, the ability of service providers in Thailand to compete with the likes of the Philippines and India is constrained.

Advantages to Thai economy: eg back office services to foreign businesses operating outside Thailand, including accounting services

1. Additional source of revenue that is presently being lost to the likes of India and Philippines;
2. Opportunity to expose Thai accounting staff to international accounting standards and practices;
3. Exposure and interfacing with foreign clients will improve language skills in particular English and provide confidence in dealing with foreigners.

Suitably qualified foreign accountants, working with locally trained professionals and staff, will be needed to impart the required skills and provide marketing, coordination and quality control.

Accountancy standards in Thailand place Thailand well competitively. Local and foreign accountants in Thailand could lift Thailand's standing as a regional services hub.

### **Recommendations – Foreign Investment**

EABC recommends major reforms to List 3 and proposes a particular emphasis on services is recommended.

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

The decision-making process for List 3 and consultation needs to be reformed.

The total picture of foreign participation which also includes other laws needs to be reviewed in accordance with, EABC suggests, submissions made by EABC. The 39 professions list is too restrictive and at least 7 should be removed.

Thailand would do well to develop business services including accounting, with a regional hub perspective.

## **C. The Legal System**

### **(1) A Rule of Law policy**

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

The World Justice Project (WJP) Rule of Law Index provides an indication of how strong the Rule of Law is. Thailand is placed 80 / 139 in the 2021 ranking. “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 in 2021<sup>1</sup> .

“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”.

## **(2) Development of Laws and Content ; Consultation process; changes to policy, law and regulation**

Good law making requires that a law must have a purpose, be able to be understood and be administered fairly so that its purpose is achieved. While the practice of stating a purpose as part of the law is useful, sometimes the law is too broad or would not achieve the stated purpose.

<sup>1</sup> <https://worldjusticeproject.org/rule-of-law-index/>

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

Proper consultation is a key part of the APEC Report on Good Regulatory Practices (GRP)<sup>2</sup> , authored by Jacobs Cordova & Associates. A regulatory impact assessment is usually needed.

The EABC appreciates the opportunities granted for its members to offer their perspectives on changes to concept, draft laws and regulations. Allowing the private sector to participate in the public hearings during the concept development and drafting process helps to ensure:

- i) That the concepts, law or regulation are practicable, have a better chance of including best practices and do not cause business disruption; and
- ii) Have received buy-in and support. Those participating in a consultation process have some moral and intellectual ownership of the resulting law or regulation, even if the result does not contain all they asked for. Contrast that with a situation where there is a minimal compliance mentality, only complying to the extent legally required, rather than having an appreciation of the spirit and intent.

<sup>2</sup> [http://mddb.apec.org/Documents/2016/EC/CONF1/16\\_ec\\_conf1\\_005.pdf](http://mddb.apec.org/Documents/2016/EC/CONF1/16_ec_conf1_005.pdf)

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

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

Unfortunately public hearings and consultation are often token or perfunctory efforts.

Public hearing means that other participants can hear or read all views, thus with the prospect of solutions being reached through consensus.

A formal consultation should include these elements:

- i) Release of concepts or policy
- ii) Hearing on the concepts of policy
- iii) Publication of the concepts and release of Draft law or regulation
- iv) Public hearing / consultation on the draft law or regulation
- v) Consolidation of inputs

- vi) Updated draft publication with publication of comments
- vii) Shorter public hearing
- viii) Publication of final law or regulation

Use of digital meeting platforms can be an appropriate way to do this as long as the ‘hearing’ is not one way. Participants need to be able to ask questions or input.

When legislation is updated, consolidated versions (which include the amendments) should be released using a reliable searchable, structure data base in both Thai and English.

#### **Recommendations – consultation –**

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

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

Consolidated versions of laws are needed.

#### **A 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 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).

In January 2022 the Thai Chamber of Commerce and Board of Trade recommended setting up government agency specifically to manage the 'guillotine' process of removing unwanted and unnecessary laws (see under Fast Track Regulatory Reform in this chapter).

### **(3) Court reports and the Court process**

Even though Thailand is a civil law jurisdiction, law reports (reports of court cases) do have precedent and persuasive value and are recommended to be reported clearly in Thai and English in a universally accessible and regularly updated digital repository. This will assist to improve access to justice, the actual and perceived quality of legal

advice provided to non-Thai speakers, and will assist to enhance confidence and perceived certainty in the Thai legal system. Case summaries and reports could be listed in such repository with an international citation system. This will further assist the Thai legal profession in its cross-border interactions.

The new initiatives relating to the pandemic for "Smart Courts" such as administering cases by digital means, permitting e-filing; allowing e-signatures, allowing interested parties to track court process electronically and regulating a presiding judge from denying evidence solely due to its electronic format are welcomed. These can be modified to become permanent features of court proceedings and allow for more efficient proceedings where Thai or foreign parties are, cannot be or it is cost prohibitive to be physically present for proceedings without detrimental effect on justice and to reduce unnecessary delays, postponements or rejections of applications and filings due to physical absence.

The EABC supports the adaptation and co-operation with the EU Commission's "Communication on Digitalisation of Justice in the EU"<sup>3</sup> which includes "e-CODEX", a computerized system for communication in cross-border civil and criminal proceedings. Such a system can assist citizens with the exercise of their rights and access to justice; businesses with tools to access information and rely upon effective justice systems to conduct their

<sup>3</sup> *European Commission Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (Brussels, 2.12.2020 COM (2020) 710 final see: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2020:710:FIN> and (see: [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/digitalisation-justice/communication-digitalisation-justice-european-union-and-proposal-e-codex-regulation\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/digitalisation-justice/communication-digitalisation-justice-european-union-and-proposal-e-codex-regulation_en)*

operations, and reduce costs for all businesses but in particular for SMEs; allow legal practitioners to support clients in the best possible way, safely and efficiently with document security, and assist co-operation between state agencies responsible for justice.

Continuation and enhancement of the existing initiatives will increase transparency, improve Thailand's rule of law and justice ratings, increase access to justice for Thai citizens and firms and for foreign investors and participants in its system.

#### **(4) Arbitration and other ADR**

Thailand has great potential as an arbitration centre. For example commercial agreements may choose a governing law other than Thai law (eg English or New York law) and suitably qualified arbitrators can hear cases from Thailand-based arbitration centres.

Changes better to support Arbitration are welcome. The Smart Visa system (see elsewhere in this chapter for more details) was updated to permit foreign arbitrators to perform duties in an arbitration case. However, for Thailand to be able to compete as an arbitration destination, restrictions preventing foreign counsel or foreign arbitrators or other support workers being able to participate in an arbitration case subject to Thai law should be liberalized so that Thai licensed counsel may work alongside foreign counsel in such proceedings. Naturally if a contract is made subject to Thai law, the parties may have agreed or may agree to proceedings being conducted under the arbitration regime of the Thai legal system, but any encumbrance to a foreign party

being able to include foreign assistance will be a deterrent to promoting Thailand as an arbitration hub and competing with other arbitral systems. Such improvements may be made without excluding Thai counsel from proceedings but instead providing co-operative framework for case preparation, administration, and other necessary legal works.

Even recognizing proposed changes (as at the launch date of this Position Paper) , the Smart Visa system could be further improved so that arbitration institutions with and without a permanent physical presence in Thailand can still issue certificates to allow foreign arbitrators to use the rules and administrative functions of those institutions, under the supervisory national system of Thailand, thereby broadening the scope and number of potential arbitrations under the Thai system and to allow ad hoc arbitrations<sup>4</sup> the opportunity to elect to use institutions. The method by which foreign counsel can obtain such VISAS should be promoted clearly and transparently.

To avoid malicious and hostile lawsuits against professional arbitrators and foreign counsel seeking to legitimately use Smart Visa and other arbitration systems modified by Thai agencies, clearer provisions on the immunity of arbitrators to lawsuit in the furtherance of their duties should be provided to prevent vexatious lawsuits in the court system by losing parties against foreign arbitrators and legal professionals which can damage the reputation and integrity of the system. Summary dismissals and realistic costs orders against applicants seeking to file such suits would be one method of deterrent. A professional indemnity insurance scheme under which contributions

<sup>4</sup> *Institutional arbitration is carried out under the auspices of a centre (eg THAC), ad hoc is done by agreement for each particular case.*



would allow professional arbitrators and counsel to be defended on an indemnity basis from insurance funds would also assist with confidence in practicing arbitration in Thailand.

Arbitration Institutes and Government could provide uniform arbitration case summaries and reports in English, removing sensitive confidential information or obtaining consent from the parties to publish awards, to allow the development of use of case interpretations by arbitration professionals and improve access to information for Thai and foreign counsel.

#### **Recommendations:**

The EABC urges the Royal Thai Government to:

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

- iii) Enhance the existing features of digitalization of civil and criminal court systems, make these permanent and allow for wider virtual attendances to facilitate non-physical attendance and access to justice by participants in a case. Consider parallels and benefits of an e-CODEX style system.
- iv) Widen Smart Visa or Long Term Resident initiatives to allow foreign and Thai counsel and arbitrators to work on cases governed by Thai law but reserving Thai law interpretation to Thai counsel. Ensure all global arbitration institutions are able to issue certificates to enable Smart Visas to be issued and provide a digitized English arbitration case report system based on deemed or actual consent of the parties to publish. Provide systems to prevent vexatious lawsuits against arbitration professionals and a supporting professional indemnity insurance system.
- v) Further developments to support arbitration especially for on-line disputes is needed.

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

## (5) Competition regulation

The Trade Competition Act was amended in 2017. In 2021 a revision to the Guideline was done by consultation through the Office of Trade Competition Commission.

The history of promotion of competitive practices and avoidance of monopoly-type situations and dominant market behaviour is weak in Thailand. The Trade Competition Act has most of the necessary tools and machinery but how it is enforced means that opportunities for effective market regulation are not taken.

Other agencies defer to the Trade Competition Commission and its office (OTCC) for decisions, rather than making competition regulation decisions themselves. A case in point is the Digital Platforms Governance Decree (administered by ETDA), developing in 2021 and into 2022. ETDA has relied on the EU Digital Services Act as a precedent but not the EU Digital Markets Act as it leaves fair competition decisions to OTCC.

EABC continues to recommend effective use of pro-competition tools.

## (6) Fast Track Regulatory Reform

Fast Track refers to a process of centralised authority to make changes to laws and regulation, including the removal of unwanted and unnecessary laws. 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.

Lessons from the Korean experience including a visit from an expert in the Korean PM's office, included:

- Political will from the top and a centralised unit
- A good data base of all laws
- A permanent law reform function

Not all were present in Thailand when the project started and it is still a 'work-in-progress'.

The Guillotine project first phase looked at 'doing business' issues, focusing on eight of the former ten World Bank 'ease of doing business' criteria<sup>5</sup> with some credible contribution to Thailand's improved Ease of Doing Business ranking to 21<sup>st</sup> for 2020 (from 27<sup>th</sup> 2019; 26<sup>th</sup> for 2018). The second phase covered some 1,000 licence issues with recommendations to remove them or modify them. The detailed work to analyse, discuss and draft the proposed text has already been done.

There were also successful projects with the Securities & Exchange Commission and the Bank of Thailand. The Bank of Thailand project (about FX management) is reported to have saved some THB 1.4bn, annualized. Some milestones:

<sup>5</sup> The old World Bank ranking was officially scrapped by the World Bank in Sep 2021 following a pause in its use from August 2020

- A well staffed Guillotine unit was established in 2018 and a consultant hired. JSCCIB supported the project financially with most budget from government.
- Some 1,094 licence issues were identified and processed for processing ('cut/combine/change/continue) and were done by July 2019. About 100 of these were contributed by the foreign business community, in which EABC and others such as JFCCT played a central role.
- In about November 2019, TDRI made a detailed report about it for implementation
- That was picked up in September 2020 by the Strategic Transformation Office (STO) which released a report (often referred to as the TDRI Report). Cabinet endorsed setting up a Fast Track Regulatory Reform main committee was established, with nine sub committees.
- The work of the sub committees continues. Two in particular (Guillotine and Digitalisation) are very relevant to business regulation.

The Guillotine sub committee has:

- re-processed a significant number of the 1,094 ready for implementation, noting that implementation may take time
- Examined several other areas for review, reduction in licensing needed and reducing unnecessary business overhead.

The overall project suffers from being under budget and under-staffed. EABC encourages appropriate staffing and budget. There is not enough staff support. In January 2022 the Thai Chamber of Commerce and Board of Trade recommended that an appropriately staffed government agency be set up to manage 'Guillotine' work.

Office of Public Sector Development Commission (OPDC) is also involved in changes which will support better administration.

### **(7) Inappropriate laws**

Trust in the Rule of Law is vital for the economy and an intelligent, well-informed society.

An older style of law making was to cast a wide net (with broad powers) and allow for selective interpretation ('if you've done nothing wrong you've got nothing to worry about'). Such laws are fewer in more recent times but they still exist. An effective consultation process is a good way to prevent these.

Other laws which unreasonably seek to curtail fair comment also need to be reviewed.

Separately, EABC has long advised that criminal defamation should not be available for use except possibly in the most extreme cases of prolonged, intentional harm. This is in line with international norms. A legislative or executive change to that effect is needed. Civil defamation as a remedy for relevant wrongs is never an easy recourse but it can be a valid remedy in appropriate cases. For on-line comments, see the Digital Economy/ICT chapter.

## D. Work Permit & Visa – focus on skilled workers

### (1) Ease of employment procedure and law to facilitate free movement of foreign skilled and unskilled workers

Some aspects of Thailand's Work Permit and Visa system go back, largely unchanged, almost 50 years (to 1972). The foreign business community and the local business community, both of which frequently rely on foreign skills, have recommended for many years that major revisions to the system are necessary. Work Permits and Visas continue to be the single most referred-to irritant in doing business and disincentive to foreign investment.

Some changes were made in June 2017 and March 2018 via two Labour Decrees which repealed the Foreign Employment Act and made a number of other changes.

The issue is not just about convenience or 'ease of doing business' or 'doing business easily'. 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 now ceased 'doing business' criteria, but are captured by

other rankings. Improvements in Thailand's old World Bank ranking gave the wrong impression that these Work Permit and Visa issues had 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) was a good way to kick-start some of the necessary changes. But even the Smart Visa retains some seemingly complicated procedures.

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

### (2) There are two groups of people:

Those not working in Thailand (Business Visitors) or on very short term visits; and 2: Those who need to live and work in Thailand (Employees and others).

#### (a) Group 1: Business visitors

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

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

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

## ADDRESSING GROUP 1: BUSINESS VISITORS

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

Whether a work permit application (WP-1 or WP-34 (previously WP10)) 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 (about 50 years old) which was most recently incorporated into the then 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’) amended by a Decree in March 2018 (known as the two Labour Decrees) 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) 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. A good development is that it is possible to enter the Kingdom and carry out a range of activities which are not ‘work’. Greater clarity is needed however.

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

- i) The Dept. of Employment has reconfirmed that a foreign director of a Thai company may not sign accounts (financial statements) at a board meeting unless he has a work permit, and that

defect vitiates (undoes the validity of) the accounts. The workarounds proposed are very cumbersome (and one may not even be valid) and add to 'doing business' overhead. This conflicts with what was understood to be the general intent of the March 2015 interpretation, and flies against the very purpose of IHQ policies which are to encourage regional and international headquarters to be established in Thailand -- in other words that people not usually working in Thailand can come here to carry out various business activities. This official statement by the Dept. of Employment directly limits their ability to do so (and presumably would also prevent them from chairing, or even presenting a report at a board meeting). In fact, these are normal business activities for a director of any Thai company, not only those with IHQ status.

- ii) The holder of a business visa was advised that he could not speak at a conference as this was 'working', again contrary to the general understanding of earlier interpretations. 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. This attitude seems to have changed to some extent.

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 could 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.

RCEP brings with it the concept of a Business Visitor (BV), as a framework. That should be capitalised on.

A positive move is that the WP 34 is stated to be a reporting matter, not a permission matter. That is for urgent and necessary work.

#### **Recommendations to support Business Visitors**

1. Institutionalise, embed in departmental and agency procedures, and train government officials about the change to law due to the 23 June 2017 Decree and March 2018 Decree which narrowed the definition of 'work'.
2. Without narrowing the scope of action 1, it is requested that the Minister of Labour issue a Declaration about what is not 'work' – the recommended text is provided by EABC which is broader than these decrees provide for. 'Work' should only be a narrow scope for people who intend to live and work in Thailand.
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, OR allow ‘no visa’ business purpose entry for most countries. The validity might be for 30 days, extendable.

4. There should be no need for the WP-34 (previously WP 10) category for ‘urgent and necessary work’; as no work permit would be required for any of the activities contemplated. Making the WP-34 reportable only, not a permission should assist..

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. TM.6 has already been ceased for Thai nationals.

6. Use RCEP to support Business Visitors.

*This is the end of the Business Visitors Group part.*

### **(b) Group 2: people with Thailand-based jobs; Employees and others:**

People who are employees of local companies (or local affiliates of multinational or other foreign companies), or who are owners of local businesses need to work and reside in Thailand. They are engaged in the generally accepted definition of “work”. For those in this category, the concept of a merged work permit and visa (eg to a ‘workvisa’) 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 February 2018, addressed four groups and it might have been a good standard for all skilled labour. See more below about Smart Visa.

Fundamental reforms are needed to the structures of work permits and visas; 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 – 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 through fundamental reforms. These are extensive and detailed and are the subject of a separate EABC document (done in collaboration with JFCCT). The recommendation summary for this group is listed here:

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

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

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

**Recommendation (a):** Restructure permits and licensing into skilled / unskilled categories with different requirements. Skilled should not need the level of health checks and other overhead.

**Recommendation (b):** Change thinking about work permits so that they support working from anywhere, are issuable while the person is still overseas. The pandemic requires this as do new concepts of working away from office.

**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; safety in the pandemic also requires this. A Digital Government system needs to see process re-engineering, interoperability amongst agencies and single sign-on.

**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) only where there is a change to 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):** Fully cease using capital invested (THB 2m) and staff ratios (4:1) 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):** rely on existing documents already filed not requiring re-filing.

**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; cut, combine, change or in the longer term, use one instrument (eg work visa). There are recommended charts prepared for this.

**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):** Allow retirees to work say 20 hours per week.

**Recommendation (q):** Allow change of status without having to leave Thailand, including from any tourist visa. Skills are needed in Thailand.

**Recommendation (r):** Provide a pathway to citizenship for students who have been educated at least partly in Thailand have grown up in Thailand. Age 20 is the crucial stage.

**Recommendation (s):** 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 (t):** many are also relevant to unskilled labour, including the same recommendations about removing 90 day reporting (reporting only change of residence, which for unskilled labour, often the employer should do), removing location specific work restrictions and other time-consuming requirements. For MoU and non MoU unskilled workers, a process review is needed to remove cumbersome and unnecessary steps.

### (3) TM 30, TM.28, 90 day reporting and related provisions

The Immigration Act 1979 has cumbersome reporting provisions. While s. 28 (reporting by the foreigner) has largely been removed, s. 30 requires property owners to report about the foreigner. Ultimately EABC recommends its removal.

90 reporting was changed to annual reporting for Smart Visa holders with a similar arrangement for Long Term Residents. While there appear to be some legislative hurdles with the inconsistencies about how 90 day reporting applies in s. 37(5) of the Immigration Act, a way should be found so that 90 day reporting applies only to changes to residential address.

#### Recommendations- TM.30, 90 day reporting

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

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

Using on-line systems to cover all situations.

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

### (4) Smart Visa

The smart visa is a useful instrument, released from February 2018 to cover four types (plus 'O' for family). but it should be more attractive and easier to gain.

Smart visa applies to the ten 'S' curve industries and three others. It has attractive features such as being issued for four years in most cases and not needing a separate work permit. 90 days reporting is changed to annual reporting.

But it has suffered from low take up. Removing burdensome scrutiny is one important means.

As at January 2022, it is planned that all categories other than Start Up will be replaced by the Long Term Resident scheme.

**SMART VISA QUALIFICATIONS**

**SMART T Talents**

- Income  $\geq$  50,000 B / month for Startup employees or retired experts
- Income  $\geq$  100,000 B / month for General Case
- Contract  $\geq$  1 year
- Targeted Industries
- Expertise in Science and Technology
- Experts in Alternative Dispute Resolution / Working for the government or Higher Education
- No minimum income
- No minimum contract term
- Targeted Industries
- Guaranteed by the employer

**SMART E Executives**

- Income  $\geq$  200,000 B / month
- Contract  $\geq$  1 year
- Targeted Industries
- 10 years of experience and bachelor's degree or above

**SMART I Investors**

- Direct Investment or Through Venture Capital  $\geq$  20 Million B
- OR
- Investment in startups etc.  $\geq$  5 Million B
- Targeted Industries
- Maintaining the Investment

**SMART S Startup**

- Saving  $\geq$  600,000 B
- Shareholder  $\geq$  25 % or a director of the company
- Targeted Industries
- Health Insurance
- OR
- Participate in Incubation / Accelerator program
- Targeted Industries
- Health Insurance
- Startup business plan
- OR
- Startup activity Ex. Startup camp
- Targeted Industries
- Health Insurance

**Thailand's SMART Visa**

**SMART Visa Unit**  
 One Stop Service Center for Visa and Work Permit (oss)  
 18 Floor, Chanchuri Square Building, Phayathai Road, Pathumwan, Bangkok 10330  
 Tel: (+66) 2209 1109 – 1110 E-mail: smartvisa@boi.go.th Website: https://smart-visa.boi.go.th

A missing category is Digital Nomad or Digital Freelancer. While there has been much analysis and discussion, no solution has been found. EABC recommends a solution based on taking a small risk to allow in appropriately skilled people. A points system is one means.

### (5) Long Term Residents (LTR) Proposals

Proposals as at January 2022 are to attract as much as one million wealthy foreigners, in four categories:

- Wealthy Global Citizen
- Wealthy Pensioner
- Work-from-Thailand professional
- High-skilled professional

A five + five year arrangement is proposed with benefits such as annual reporting rather than 90 day and an 'automatic' work permit in all categories (different to Smart Visa which does not need a work permit). There are some attractive features. The tests are generally about proof of income and proof of wealth. LTR applies to some 18 targeted industries, but it is not clear how it would support activity in Education for example. It is not clear what happens to a LTR after 5 or 10 years, does the wealthy global citizen or Wealthy Pensioner lose LTR status?

All categories of Smart Visa other than Start Up would be ceased and subsumed into LTR. It is not clear whether existing Smart Visa holders would stay under a that regime or would migrate to LTR, assuming they qualify.

The LTR proposals do not address the significant barriers regularly encountered by legitimately established, long-term foreign residents living and working in the Kingdom who are already contributing to its economic and social well-being. In no way are the LTR proposals a means of tackling those issues nor will they contribute to doing business easily. As the proposals will also be open to existing residents or workers in Thailand and may bring added skills, they are beneficial to the economy.

At January 2022, there were still a number of open issues, and a better understanding of tax consequences, including 'Permanent Establishment and tax residency issues is needed. It is not clear for example how support for Arbitration professional would work or how it will attract sufficient skilled people.

There are some specific circumstances, not within LTR, which need to be addressed to avoid significant unfairness and anomalies for those who do not qualify for LTR:

- 90 day reporting – change to reporting change of address only
- Residents
- Retirees – allow work up to some number of hours per month at least.

#### **Recommendations – Smart visa and LTR**

Retain Smart Visa for all categories where there is no LTR solution

A solution for Digital Nomads, Digital Freelancers is needed

LTR: recognize wealth broadly; include existing investments and businesses created.

LTR if open to people already in Thailand should have benefits to the economy but not enough in attracting skilled people; review attractiveness of the highly skilled category

Outside LTR fix anomalies in 90 day reporting, retirees, residents.

### **(6) International Labour Norms**

There are cases of poor treatment of workers. Thailand as a participant in the world trading order will improve its status through upgrading adherence to international norms. The ILO has standards. The situation with illegal, unreported and unregulated (IUU) activity in the fishing industry has improved through intervention. Other areas need addressing.

### **(7) Importance of English and other important language for the Thai workforce**

During the past 25 years, neighbouring economies have gone through, and continue to go through, major economic development, and liberalisation of their laws that affect foreign investment, but Thailand has been slow in this respect. Thailand faces significant competition. Countries such as Malaysia, Vietnam, Cambodia, Indonesia have all progressed and developed. They are competing with Thailand in areas in which Thailand has substantial economic activity and investment: manufacturing, tourism and agriculture. The ability of the Thai workforce to communicate in English and other languages is poor when compared to its competitors, as many surveys have indicated.

### Recommendations – English language

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

## E. Anti Corruption

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

Transparency International (TI), in its Corruption Perceptions Index 2015, ranked Thailand 76<sup>th</sup> out of 175 nations on the issue of public sector corruption, previously ranked 85<sup>th</sup> in 2014. In 2016, Thailand's ranking slipped to 101<sup>st</sup> out of 176 countries and in 2017, gained slightly to 96<sup>th</sup> / 180. The government stated at the time that it was not satisfied with that minor improvement and regarded the overall position as not materially changed. The 2018 ranking was 99<sup>th</sup>/180<sup>6</sup> (improved over 2017) but 2020 104<sup>th</sup>. The 2021 ranking, released in January 2022, slipped to 110<sup>th</sup>. TI notes that this reflects Thailand's worst score.

The direction of movement is not encouraging. The public and private sectors, led by government leaders and private sector groups will need to work together to improve this.

Although private sector bodies such as

<sup>6</sup> <https://www.transparency.org/cpi2018>

- i) ACT (Anti-Corruption Organisation of Thailand), a Foundation from 2014. Formerly ACN<sup>7</sup>
- ii) CAC Collective Action Coalition Against Corruption, a private sector project of Thai IoD which acts as the secretariat<sup>8</sup>

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

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

- i) Public sector and private sector collaborative efforts,
- ii) education,
- iii) peer pressure through Codes of Conduct,
- iv) promoting understanding of Rule of Law,
- v) increasing the chance of being caught,
- vi) understanding the stigma of public exposure and the consequences of being banned from government business,
- vii) education about local and foreign extra-territorial legislation and the new Organic Act (see below)
- viii) internal controls.

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

<sup>7</sup> [www.anticorruption.in.th/2016/en/](http://www.anticorruption.in.th/2016/en/)

<sup>8</sup> [www.thai-cac.com/node/7601](http://www.thai-cac.com/node/7601)

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

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

### **Section 176 is most important**

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

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

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

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

### Recommendations – Anti Corruption

Greater education and collectively saying ‘no’ are needed.

Implementation of internal controls

Strengthen whistleblowing and witness protection

## F. Sustainability

Sustainability can embrace many things and is often used as a buzz word or to check a compliance box or show that an organization is associated with positive environmental action.

But Sustainability is much more than that and needs to be understood as value-enhancing in its own right. Sustainability policies should be built-in, not bolted on. Industry education, promotion of understanding of the value of sustainability, how to implement and take advantage of promotions are all important.

There are a few global policy bases for understanding sustainability. Two commonly sourced are:

**UN Sustainable Development Goals** (17 SDGs)<sup>9</sup>. The UN supports the development of the SDGs in Thailand.<sup>10</sup>

**The Paris Agreement**<sup>11</sup> or the Paris Accords or the Paris Climate Accords is a framework to avoid dangerous climate change by limiting global warming to well below 2°C and pursuing efforts to limit it to

<sup>9</sup> <https://sdgs.un.org/goals>

<sup>10</sup> <https://thailand.un.org/en/sdgs>

<sup>11</sup> [https://ec.europa.eu/clima/eu-action/international-action-climate-change/climate-negotiations/paris-agreement\\_en](https://ec.europa.eu/clima/eu-action/international-action-climate-change/climate-negotiations/paris-agreement_en)

1.5°C. Made in 2015, the agreement entered into force in November 2016. 193 members of the United **Nations Framework Convention on Climate Change (UNFCCC)**; established 1992; entered into force March 1994) are parties to the Paris Agreement (at November 2021). A ‘Conference of the Parties’ or COP is a regular update to the UNFCCC. COP 26 was also the third meeting of the parties to the 2015 Paris Agreement (designated CMA1, CMA2, CMA3), and the 16th meeting of the parties to the Kyoto Protocol (CMP16). COP27 is planned for 2022. Thailand’s commitments at COP 26 are noted in the Energy chapter.

More recently the **European Green Deal**<sup>12</sup> is a set of policies which would make the EU the first continent to be carbon neutral, and has other related objectives.

**Circular Economy** has taken hold in Thailand with some leading proponents in large local companies. The principles of consuming less, of building in re-use by design and reducing waste and land fill are becoming more understood.

**Bio-Circular-Green** (BCG) policies were adopted by the Thai cabinet in January 2021. There are many BOI promotions to support the policy.

**Environmental, Social, and (Corporate) Governance** (ESG), are the three broad categories of interest for what is termed “socially responsible investors. In the capital markets, analysts rate

See the Energy Chapter in this position paper for how energy needs to play an increasing role in that sector in

<sup>12</sup> [https://ec.europa.eu/clima/eu-action/european-green-deal\\_en](https://ec.europa.eu/clima/eu-action/european-green-deal_en)

supporting sustainability, and the Automotive Chapter for how motor vehicles are transforming and what needs to be done. Other relevant chapters are Industry, Digital Economy/ICT and Tourism.

Carbon pricing is covered in the Energy Chapter as are Thailand's commitments at COP 26. 'Net Zero' and 'carbon neutrality' are slightly different concepts. Net Zero scope is much narrower and more limited (e.g. pertaining to specific sector and/or gases). In theory, this entails not increasing carbon emissions while reducing one's carbon footprint through offsets. Net zero requires focusing on reductions of carbon emissions as much as possible while relying on carbon offsetting as a last resort.

The European Green Deal<sup>13</sup> targets for Greenhouse Gas (GHG) Mitigation Mechanism:

- 2030: 55% reduction in Greenhouse Gas Mitigation Mechanism GHG on 1991 levels
- 2050: Net neutral.

For more details and for information on Greenhouse Gas Emission, see the Energy Chapter. CBAM Carbon Border Adjustment Mechanism (an EU policy launched July 2021) is a way of causing carbon reduction through international trade rules.

For **environmental policies**, the Ministry of Natural Resources and Environment has a 20 year strategy<sup>14</sup> but no mention of clean air, although strategy 4 does cover eco-friendly production and consumption.

For **clean air**, there is The ASEAN Agreement on Transboundary Haze Pollution (AATHP) 2002 has been ratified by all ASEAN member states (Thailand 2003, Indonesia 2014). Nevertheless there has long been a push for clean air legislation. A private member's bill (Clean Air draft law) was proposed in 2020 but does not appear to have made much progress.

Under s. 32 of The Enhancement and Conservation of National Environmental Quality Act, (NEQA) B.E.2535 (1992), the National Environment Board (NEB) has power to prescribe Environmental quality standards.

The Thailand Action Plan to reduce particle matter of The Pollution Control Department (MNRE) includes control and of air pollutant emissions at source (Measure #2).

EABC recommends the infusion of sustainability measures via a variety of means into mainstream business.

### Recommendations – Sustainability

Understanding of a variety of global bases for sustainability

Appreciation that pro sustainability policies will become part of FTAs

Built-in, not bolted-on. Sustainability integration.

Promotion of various tools including BCG, ESG In all sectors, the infusion of sustainable practices Enhancing incentives for transforming business and sustainability integration.

<sup>13</sup> [https://ec.europa.eu/clima/eu-action/european-green-deal\\_en](https://ec.europa.eu/clima/eu-action/european-green-deal_en)

<sup>14</sup> <http://www.mnre.go.th/en/about/content/1065>

# Digital Economy / ICT

## SUMMARY OF RECOMMENDATIONS

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

Digitalisation is a transformation which needs to apply to all participants in the economy.

### 1. Infrastructure

- 1.1. Industry reform including wholesale and SOE reform
- 1.2. An holistic plan for national broadband infrastructure
- 1.3. Liberalising international gateways fully
- 1.4. Spectrum plan and economic-based pricing; avoid artificial scarcity
- 1.5. 5G: the need to support use cases and infrastructure sharing
- 1.6. MVNO policy to support innovation
- 1.7. Cease the Foreign Dominance Notification
- 1.8. Telecom merger must result in a competitive market.

### 2. Operating and Support Systems, Digital Governance

- 2.1 Promote Trusted Internet by MSM governance models.
- 2.2 Cybersecurity – MSM principles and state accountability
- 2.3 Data Privacy – review subsidiary legislation not yet released as at January 2022
- 2.4 Digital Government – a visible, workable strategy for whole-of-government
- 2.5 Fake News – primary tool is education; avoid government being arbiter of truth; a policy for negative on-line comments
- 2.6 Skills development is a multi-pronged plan; Digital Literacy essential
- 2.7 Procurement and Anti-Corruption – enhancements and positive steps to be built on

### 3. Applications and Digital Services

- 3.1 Platforms – resolution of issues of scope, presence and control; Platforms are like the new FDI
- 3.2 Large volume of regulation – ensure it works in harmony.



- 3.3 Enhanced support for Fintech and Start-Ups
- 3.4 Clearing roadblocks with eCommerce registration and making it attractive.
- 3.5 eCommerce Tax clarity needed
- 3.6 Digital Vaccine certificates will develop further.

## A. Background about Digital Economy

The Digital Economy grows in two ways:

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

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

'Digitalisation' refers to the transformation from older analogue or off-line standard business procedures and capabilities to a state relying on the use of data, platforms and tools which are typically connected (on line). This change needs to occur at four levels: personal, company, industry and economy-wide. EABC ran a seminar about

this. There is government support, in particular for SMEs, from Ministry of Industry for example. The Thailand 4.0 vision and objectives (being a national interpretation of the 4 IR – or Fourth Industrial Revolution concept), requires digitalization.

We find the distinction used by DEPA convenient:

- 'Digitalisation' as described above
- 'Digitisation' is an electronic form of a hard copy. Thus it could mean e filing of a PDF file. There is usually no intelligence in the system to read the data or enter data in machine-readable fields. To illustrate the 'Certificate of Entry' (COE) tool used 2020-2021 was paper based but digitized, whereas the Thailand Pass introduced late 2021 has some digitalized features.

The pandemic has afforded great opportunities to digitalisation. Some have been taken up (eg the Electronic Meetings Decree of April 2020; many procedures with the Revenue Department; some corporate filing with Department of Business Development) but some opportunities have not been seized (eg the failure to digitalise visa-related procedures throughout 2020 and 2021).

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

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

For overall policy making, the Ministry of ICT became the Ministry of Digital Economy & Society (MDES), with some rearrangements. The three main agencies are DEPA (Digital Economy Promotion Agency; previously SIPA), ETDA (Electronic Transactions Development Agency) and DGA (Digital Government Development Agency, previously Electronic Government Agency EGA). The two SOEs (TOT and CAT) have been merged into National Telecom and confusingly sometimes act as a corporatized instrument 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. There is a separate committee for Personal Data Protection (PDPC, announced January 2022) and Cybersecurity. A Fake News Centre has been established.

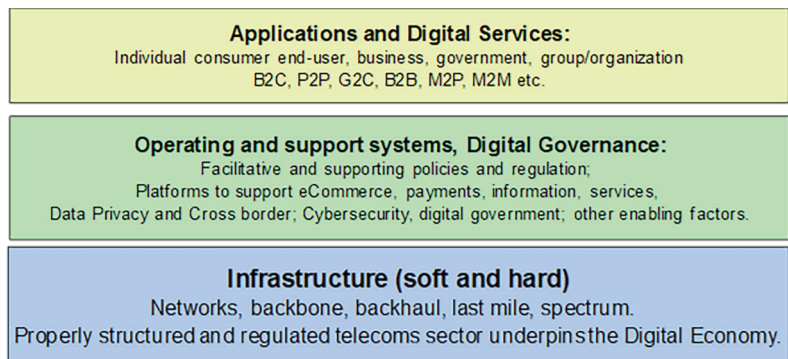
**EU polices, regulation and practices** are relevant in this area. The Digital Single Market, Digital Inclusion, GDPR, platform regulation, Digital Services Act all have policies which offer good precedent and in the case of the GDPR a good global standard. These are mentioned.

There are many digitally-related ASEAN instruments which range from MoUs, to expressions of intent, to agreements. Most are in the Annex to this Chapter, at the end of this Chapter.

### (1) What is the Digital Economy?

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

- 3 Applications and Digital Services
  2. Operating and Support Systems, Digital Governance
  1. Infrastructure (soft and hard)
- The Digital Economy will see enormous



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

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

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

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

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

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

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

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

growth. In keeping with Thailand’s commitment to achieving the UN Sustainable Development Goals<sup>1</sup>, and as with all industries, circular economy strategies and BCG (Bio Circular Green) will need to apply. These need to be achieved at the same time as the ‘Thailand 4.0’ objectives, which is Thailand’s take on 4IR or Fourth Industrial Revolution. Thailand 4.0 should result in technologies which can be applied and used (AI, IoT, Big Data etc) in support of circular economy efficiencies.

<sup>1</sup> More in the CSI Chapter and the Energy Chapter

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

Rankings tables are shown in the Introduction chapter

### **Recommendation about the Digital Economy concept:**

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

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

### **(1) Infrastructure – major issues**

#### **Infrastructure (soft and hard)**

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

Here in this 2022 European Business Position Paper we highlight a number of the major issues about the telecoms sector which impact the Digital Economy and thus the economy.

### **(a) Telecoms Industry reform/ restructuring and SOE Reform**

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

But the industry in Thailand has never properly evolved. This is because of the long duration (through to 2018 which was the formal end of the last mobile concession agreement, and in other guises, on-going through fresh

agreements) of concession arrangement whereby two SOEs owned the spectrum and allowed the private sector to use it under concession arrangements. The last concession expired in 2018, but due to inevitable SOE-private sector special deals, the private sector still relies on use of spectrum from SOEs, under special ad-hoc commercial agreements. This is not how it was meant to work: all spectrum was intended to be licensed directly from the NBTC. National Telecom is still 100% state owned, they are used as instruments of policy execution in a variety of ways and still wield effective informal power beyond those of an operator.

A merger of CAT and TOT (now 'National Telecom Co') without actually reforming; so the reform steps are largely still to be done. The objective should not be survival under the current business model (whether merged or not).

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

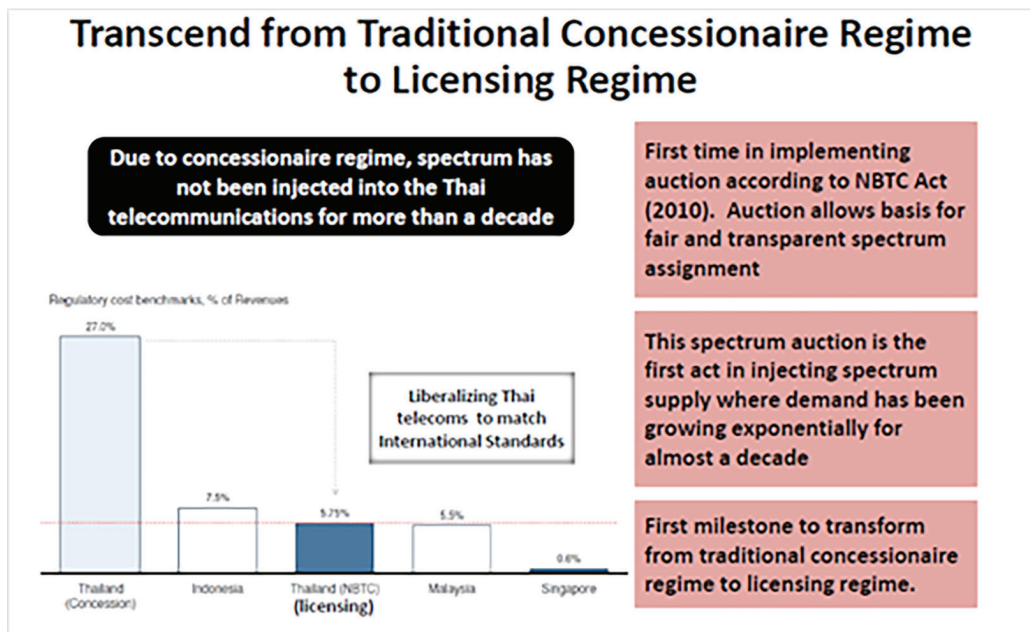
- i) Government departments providing monopoly post, telephone and telegraph (hence the term 'PTT') services
- ii) A separated regulator which becomes independent.
- iii) Corporatisation, often with postal services restructured to another entity
- iv) At least partial privatisation (we stalled about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

Evolution and reform have been tried a few times, but stalled at stage (iv). The merger is not essentially about reform and it is hoped that that will still be done.

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.
- ii) Market distortions and upsets to a fair process for allocation of spectrum (before and after auctions, not during) where special deals are done
- iii) A two-speed industry: direct licensing as promised and an extended de-facto concessionera through ad hoc agreements for spectrum use. (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



- iv) A poor basis for 5G which relies most importantly on an appropriately structured sector so that infrastructure can be shared.
- v) Loss of international earnings: We may consider the varied development paths of British Telecom (BT), Telstra, Singtel, Telekom Malaysia (TM), and PLDT (Philippines) and many others. Over some years, all have become listed entities in reasonably to very competitive markets which have strengthened the players in those markets and in most cases enabled the 'PTT' to invest overseas. The TM evolution story in particular is an impressive one (TM for example has won prestigious regional awards 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 in terms of SOE reform in the sector.

For example it may be less costly to promise all workers in the SOE jobs through to retirement or at least for some years (with whatever re-skilling is needed) under a restructured model, than to continue with the loss-making activity and activity which stymies innovation and prevents the unlocking of the sector, as we have it today. EABC has recommended that this approach be analysed and applied.

An SOE such as NT may have some national service function in providing broadband to areas where there is less than a commercial return on investment, and there are other legitimate focus areas. These roles do not justify the lack of reform.

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 SOE wields self-centred power which prevents reforms. Corrupt practices are not absent from this sector.

Structural reform means

- i) creating a workable and regulated **wholesale market** and
- ii) **re-direction; reformation and re-focus of National Telecom**. There were two because traditionally one did domestic business, the other international. In days long gone when international was about 'correspondent' business (including much reliance on satellite) this made sense. It no longer does make sense

to have two entities, which now seem to pursue just about anything which can be justified via a business plan (including retail mobile, competing with the private sector, which many believe will never be sustainable on a fully costed basis); as stated merger is not real reform.

The Ministry of Finance (NTs shareholder) has indicated that reform is needed. Indicatively:

- Focus on core, fixed business, get out of retail mobile.
- Strengthen backhaul, backbone, international gateways
- Collaborate, work with the entire industry on a fair and non discriminatory basis

Real Reform of the SOE is a 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 NT.

### (b) National broadband infrastructure

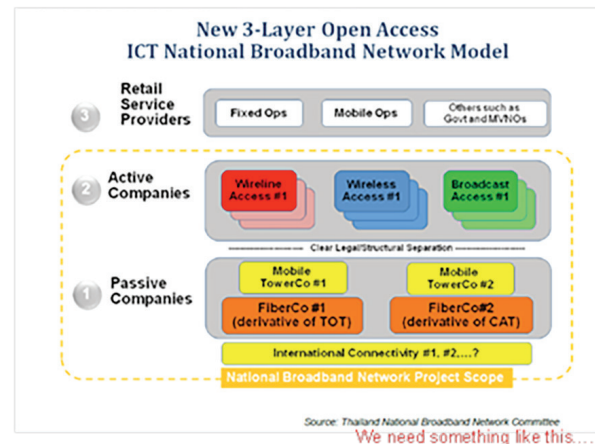
NT continues to be used as public policy tools. While a regional broadband network built and run by an existing SOE may possibly serve some well, the opportunity to do a properly structured national backbone with appropriate wholesale regulation has not been taken. The rural broadband project Net Pracharat<sup>2</sup> has received well-deserved accolades for its achievements. But it does not provide a whole-of-country solution which would also

<sup>2</sup> [www.netpracharat.com/Netpracharat\\_EN/one-page/](http://www.netpracharat.com/Netpracharat_EN/one-page/)

serve to underpin infrastructure needed for 5G. A structured approach whereby financial returns (and thus funding) varies from different parts of the network is necessary.

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

### Model ca 2010 - Thailand



In these models there are less than commercial returns in some parts of the networks. An SOE may have a legitimate role in addressing those.

### (c) International gateways

Liberalising all aspects of international gateways and addressing bottleneck issues such as at cable landing stations will improve the ability to access affordable bandwidth for international use.

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

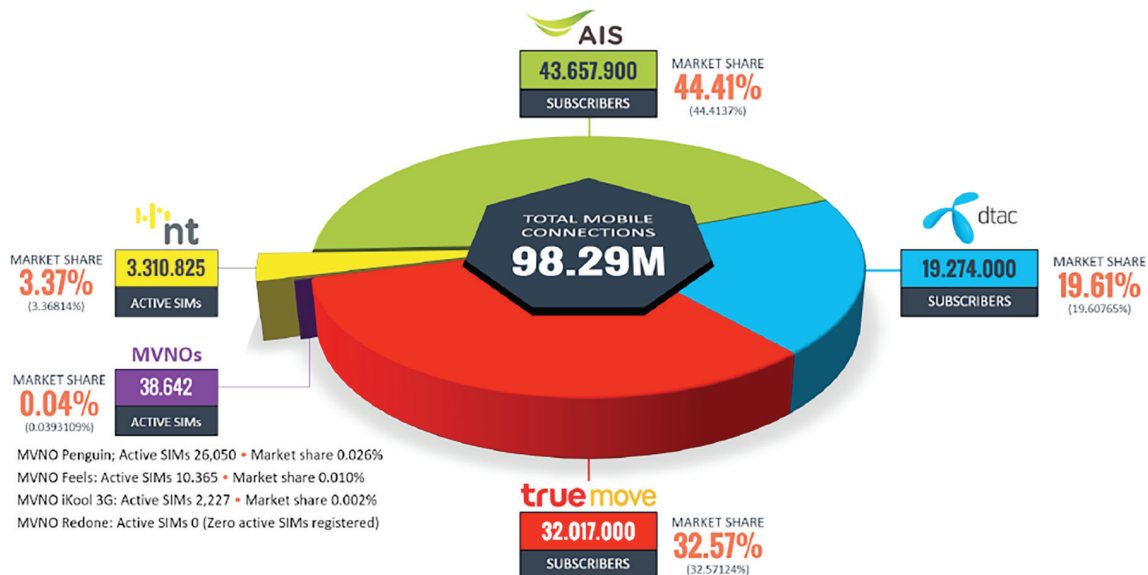
Thailand has multiple international gateways, as should be the case but internet gateways should be fully liberalized in all respects. Trying to make a single international gateway is not recommended.

#### (d) Market shares and proposed telecoms merger

Market shares at Q3 2021<sup>3</sup> are shown:

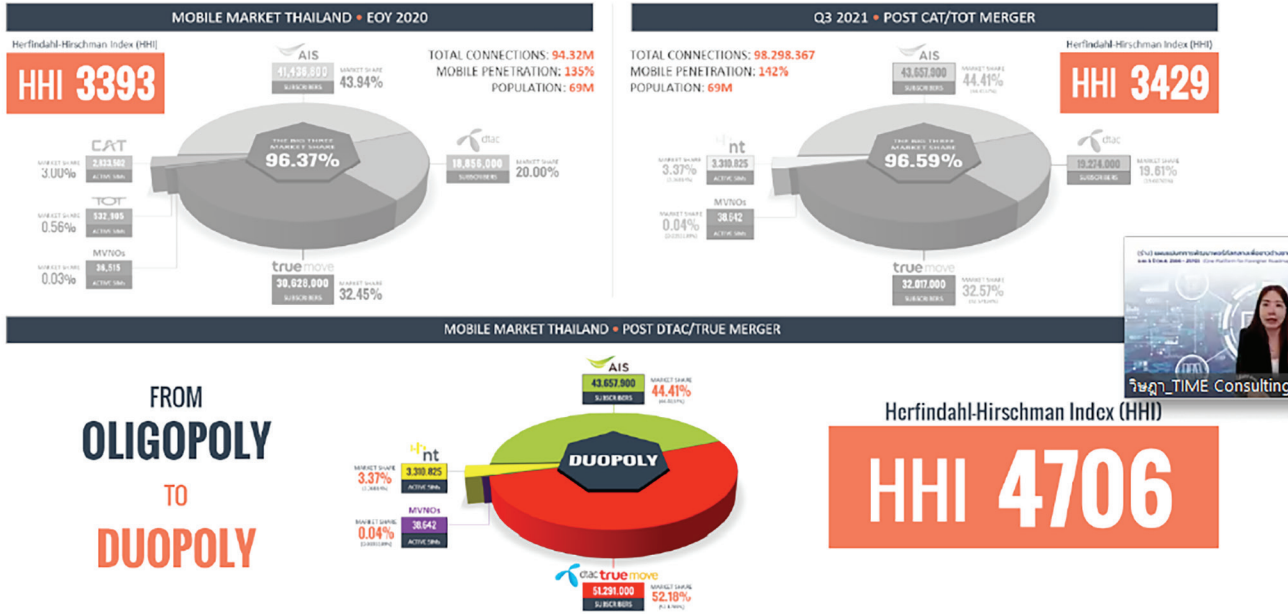
The market structure show total market share of about 96% by the main three operators with a small market share by NT (the merged CAT and TOT), and negligible market share by MVNOs (more on MVNOs later). This is very different to Malaysia for example.

In late 2021 a merger of DTAC and True (or related entities) was announced, subject to regulatory approval. We do not comment on the parties involved or on the deal, but EABC has long taken a great interest to see a competitive structure in the telecoms sector, which underpins the digital economy. The proposal would have the effect of two operators with a combined market share of some 96% with NT at about 3% and MVNOs at less than 0.5%.



<sup>3</sup> Source: Yozzo, Thailand





The Herfindahl-Hirschman Index (HHI) measures market concentration to determine market competitiveness.

The U.S. Department of Justice, the European Commission and the NBTC in Thailand use HHI as part of evaluating potential market, mergers and acquisitions (M&A) issues. The method is not the sole determinant of a regulator’s decision, but is used as a key factor.

HHI is calculated by squaring the market share of each firm in the market and then summing the numbers.

- HHI of less than 1500 = A competitive marketplace
- HHI of 1500 to 2500 = Moderately concentrated
- HHI of 2500 or greater = Highly concentrated

According to the analysis shown, pre CAT/TOT merger, HHI was 3,393; after NT was created it would be 3,429 and after the proposed merger, 4,706.

Even ignoring use of the HHI, it is clear that two players with 96% (as already described) raises concerns about the effectiveness of competition.

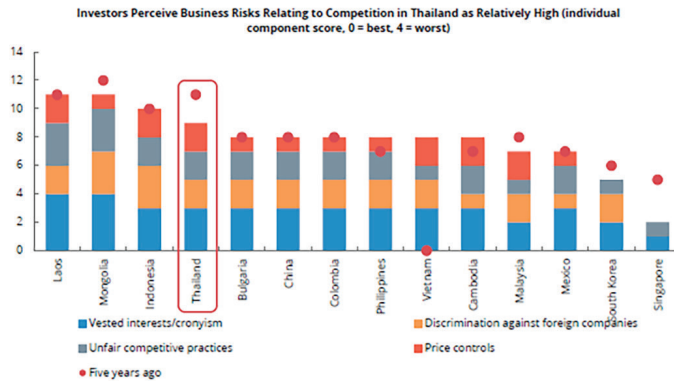
Spectrum ownership does bring in other factors and makes the situation complex. At January 2022, the matter was still subject to clearance by NBTC and OTCC.

EABC urges all parties to come to an arrangement whereby the telecoms sector in Thailand can engender the confidence that it will be a competitive market. Competition should not just be about price but also service and innovation.

The World Bank has noted that contestability and a level playing field would be positive changes<sup>4</sup>.

## Market contestability and a level playing field for entrants would create value for the digital economy.

### Challenges to a competitive market in the digital economy



Source: Economist Intelligence Unit (EIU) Risk Tracker, March 2021.

- Market concentration can increase the risk of collusion from the existing linkages between firms that offer services in the same digital sectors.
- Siloed market structures and missing interoperability across market players slows down market dynamism.
- Personal Data Protection Act (PDPA) represents a positive step towards regulating data but might unintentionally stifle competition.
- Excessive regulation for firms to register to participate in digital commerce may deter participation of young and SMEs.

### (e) Spectrum

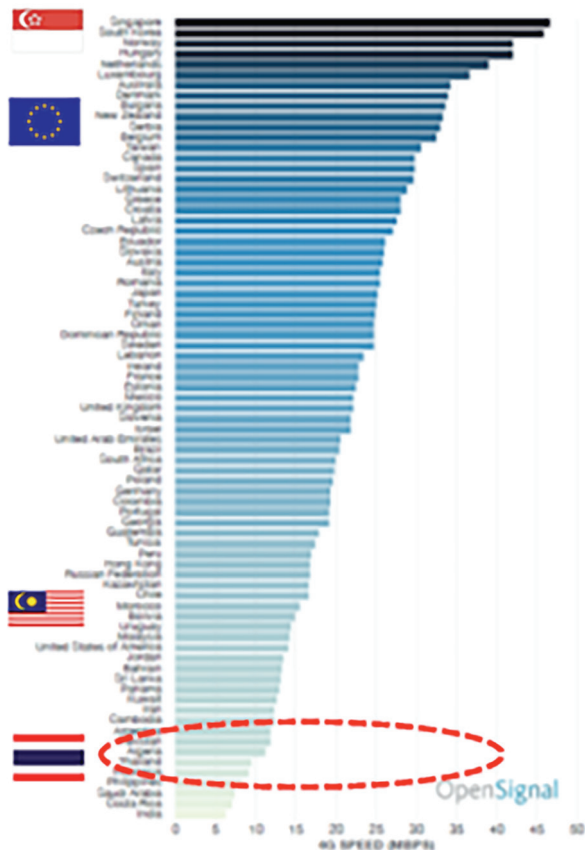
Under the NBTC Act B.E. 2553 (also known as the Frequency Act) s. 4, radio spectrum is defined as a subset of the electromagnetic waves lying below 30 gigahertz (GHz - billions of cycles per second). These support a wide range of business, personal, industrial, scientific, medical research and cultural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

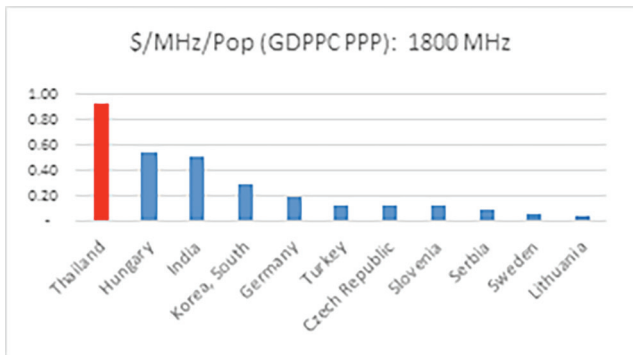
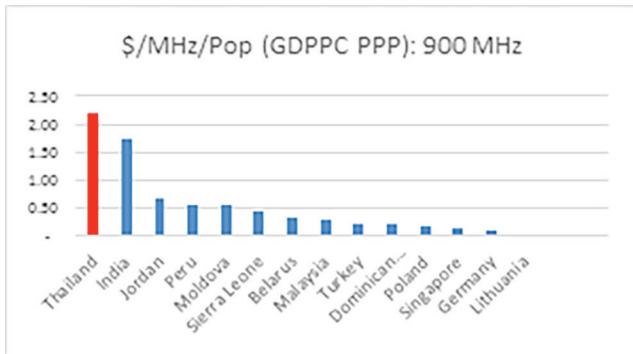
<sup>4</sup> World Bank Thailand Q4 2021.

### (i) Scarcity and high prices

In Thailand's case a long term plan for spectrum assignment is needed. A national spectrum plan in which all relevant parties have confidence is lacking.

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





Source: GSMAi

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

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

The 2G, to 3G to 4G development saw a shift from switched voice to data based services. 5G can be a game-changer which allows a single mobile network to provide a variety of heterogeneous services in various sectors-not limit only the communication sector as in the past. However, spectrum will remain a crucial and critical resource in the 5G era. 5G needs spectrum within three key frequency ranges to deliver widespread coverage and support all use cases.

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

Thailand held its 5G spectrum auction in February 2020, NBTC assigned frequencies in 700 MHz, 2600 MHz and 26 GHz to Thai operators for 100.52 billion baht (\$3.2 billion). AIS and TrueMove H obtained licenses in the 2.6 GHz and 26 GHz bands, while DTAC purchased only 26 GHz licenses.

AIS also secured spectrum in the 700 MHz band. CAT and TOT (now NT) purchased licenses in the 700 MHz and 26 GHz bands respectively<sup>5</sup>.

<sup>5</sup> Source: OpenSignal

NT had plans to return the 700MHz spectrum. In January 2022 there were plans for some kind of use by AIS, some by purchase and some by joint use. It surprised many that SOEs would be involved, competing with the private sector.

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

Absent from the 5G spectrum auctions:

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

5G spectrum auctions were done without first getting fundamentals in better shape. 5G use cases are many, but good high speed bandwidth offered by 4G still has value to be provided until more reliable plans for 5G can be put in place:

- A good pricing with economically-based pricing reflecting the interests of all user groups.
- A long term spectrum plan which can be relied on.
- Industry restructure; a confirmed path for SOE reform and infrastructure.
- Workable plan for MVNOs

- Not technologically neutral, requiring operators to use the spectrum only for 5G technology, a situation which may have been partially resolved.

Rectifying the situation post auction is an on-going challenge.

### (iii) Regional harmonisation

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

### (f) Mobile Virtual Network Operators (MVNOs)



Table shows situation through to Q3 2021. The current MVNO figures are so small that they don't affect the market

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

### VNO models – variety of commercial relationships

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

Over 60 MVNO licenses have been awarded in Thailand, with nine launching since the introduction of MVNO in Thailand in 2009. Few remain more or less active with approximately 350,000 – 400,000 subscribers combined; this represents less than 0.5% of market share of subscribers.

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

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

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

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

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

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

**Recommendations about Spectrum; 5G and MVNOs:**

- Industry reform is needed, including wholesale and SOE reform. An holistic plan for national broadband infrastructure
- Liberalising international gateways fully
- Spectrum: needs a long term plan; economic-based pricing; avoiding artificial scarcity
- 5G: Why the rush? Thailand will not gain from rushing in unprepared – first need a long term spectrum plan, industry restructure and SOE reform; spectrum pricing
- For MVNO (Mobile Virtual Network Operators), recommended is developing of a workable and fair policy to stimulate. Abolishing individual licences and rather using class licences (as Europe did from 2009) and many countries do now. Standard benchmarked access offers should be workable. See 2019 business submission

**(g) An Independent regulator - NBTC**

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

For some time there have been questions about the composition of NBTC. In January 2022, at least five of the seven seats were announced with a new chair.

EABC wishes NBTC well, has engaged regularly with the NBTC in the past.

**(h) Foreign Equity Restrictions and service sector liberalisation**

Foreign equity caps for category 2 and 3 telecoms licencees (s.49) are in the Telecoms Business Act but for category 1, List 3 of the FBA applies which includes a permissive regime for majority foreign ownership via a Foreign Business Licence. The issues have not materially changed since 2006, and are referred to in the Cross Functional Issues Chapter in this Position Paper, which describes restrictions on foreign equity participation, and thus effective competition, in the services sector. A structured approach is needed for foreign equity in telecoms, with changes to the law including the Telecoms Business Act which hard wires foreign equity at 49% for category 2 and 3 licencees. Telecoms Business Act needs amendment to lift the equity limits. FBA List 3 or other policy needs revising to make majority foreign equity the norm.

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

With changes in the market, the Foreign Dominance Notification of 2012 continues to be an administrative burden with no value to the economy.

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

EABC has also made detailed submissions on the Foreign Business Act in June 2018 and October 2020, also available on the EABC website and referred to in the CSI chapter.

#### **Recommendations about NBTC, foreign equity:**

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

## **C. Operating and Support Systems; Digital Governance**

#### **Operating and support systems, Digital Governance:**

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

### **(1) Trusted Internet concept**

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

The amended Computer Crimes Act (2007 and amended 2017) grants authorities wide powers to control and censor online content and widens the law about defamation (which can be criminally applied), almost making possession an offence in itself. Authorities can now access private data without following usual process. Such data includes records of financial transactions, phone calls and text. Records of what is done with such data are not mandatory.

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

An updated Data Retention Notification was issued in 2021 (updated from 2007) with no public hearing. While an update was needed, there seems to be some over-reach in terms of requiring record retention for example in cases where a restaurant offers its guests free WiFi.



## (2) Cybersecurity

### (a) Background, standards, types of threat

Cybersecurity standards<sup>6</sup> have existed over several decades as users and providers have collaborated in many domestic and international forums to effect the necessary capabilities, policies, and practices - generally emerging from work at the Stanford Consortium for Research on Information Security and Policy in the 1990s. Also many tasks that were once carried out by hand are now carried out by computer; therefore there is a need for information assurance (IA) and security.

The NIST Cybersecurity Framework tends to be the most popular best practice for Information Technology (IT) computer security, but many note that it requires significant investment. There are easily over 15 major standards, some sector specific (eg banking).

The greatest scourge which we all suffer from is malware, and in particular ransomware, which cause a variety of harms including:

- i) Damage to business and a business' reputation
- ii) Harm to a state's operations and governance; G2C, B2B, B2C, G2B interactions
- iii) IPR violation
- iv) Violation of data privacy/personal data

The IP sector has successfully got to a point where IPR violation is widely understood as a criminal offence. The FBI warning shown at the start of a movie is a reflection

<sup>6</sup> [https://en.wikipedia.org/wiki/Cyber\\_security\\_standards](https://en.wikipedia.org/wiki/Cyber_security_standards)

of community acceptance that violating IPRs is and should be a criminal offence. Peer pressure has a positive influence on recognition of the criminal nature of violation.

Difficulties with being able to catch IPR violators is not a reason for diluting penalties or resiling from enforcement measures.

However in the IT and on-line worlds, attitudes towards hacking, malware and ransomware are softer, even though the harm reaches more widely and be more severe than an IP violation. Questions posed about this at IT conferences often elicit the response: "but it is so hard to find the perpetrators and secure convictions".

Glaringly absent is the kind of attitude about IPR violation. Indeed in the IT industry hackers and perpetrators of malware and ransomware attacks are even admired professionals. 'White hat'

hacking is part of cybersecurity defence. Perpetrators may be seen as good future white hackers, or playing both sides of the street.

A ransomware attack is a criminal conspiracy. One party causes the violation and harm by rendering data or a system unaccessible or unworkable, or gaining access to confidential information (eg personal data); a connected or related party offers the solution by payment of an unlocking fee or ransom amount to allow access, restore operation or not to carry out a disclosure threat. In the bricks-and-mortar world, conspiracy is an offence which is usually regarded as more heinous than the underlying, related offences. Not so in the IT or on-line world.

Recorded Future Insikit Group is seen as a vendor-neutral organisation and claims to be the world's largest provider of intelligence for enterprise security.

“In the first half of 2021, the marketplace for ransomware matured as more operators began hiring affiliates to increase the effectiveness of their attacks. Ransomware operators have demonstrated increased sophistication by adding DDoS to their attacks, ... This evolution demonstrates that ransomware operators are no longer considered unorganized cybercriminals, but now have the resources to compete with well-established groups like nation-state threat actors.”<sup>7</sup>

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

- Malware/Ransomware
- State actors hacking and distorting national systems
- Identity theft through taking over any of several identifiers, including biometric data
- Blockchain has many uses other than for Cryptocurrencies, but Cyber criminals will focus on Coins and Exchanges
- Cyber Criminals will use Artificial Intelligence (AI) & Machine Learning (ML) to conduct attacks
- Supply chain attacks will become mainstream
- File-less and File-light malware will explode
- Organizations Will Still Struggle with Security-as-a-Service (SaaS) Security

- Organizations will continue to struggle with Infrastructure-as-a-Service (IaaS) Security — More Breaches Due to Error, Compromise & Design
- Financial Trojans will continue to account for more Losses than Ransomware
- Expensive Home devices will be held to ransom
- IoT Devices will be Hijacked and used in DDoS Attacks
- IoT Devices will provide persistent access to Home Networks

Due to the types of harm and those impacted, EABC has proposed a multi-stakeholder approach to attacking ransomware and in 2021 met with DIP, the National Cybersecurity Agency and a parliamentary committee as a start to address, and requested that the matter be placed on the 2022 agenda for the EU's IP Key S. E. Asia issues.

The ITUs Global Cybersecurity Index for 2020 ranked Thailand 44th / 169<sup>8</sup>.

### **(b) Cybersecurity Act**

The Cybersecurity Act came into force in late May 2019. EABC was involved in public hearings and submissions and the government is to be commended for bringing to closure a law where many had diverse views. The resulting law leaves open some concerns. Subsidiary legislation (regulation) is still being processed. EABC met with the Cybersecurity Agency in 2021.

<sup>7</sup> <https://go.recordedfuture.com/hubfs/reports/cta-2021-0831.pdf>

<sup>8</sup> <https://www.itu.int/en/ITU-D/Cybersecurity/Pages/global-cybersecurity-index.aspx>

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

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

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

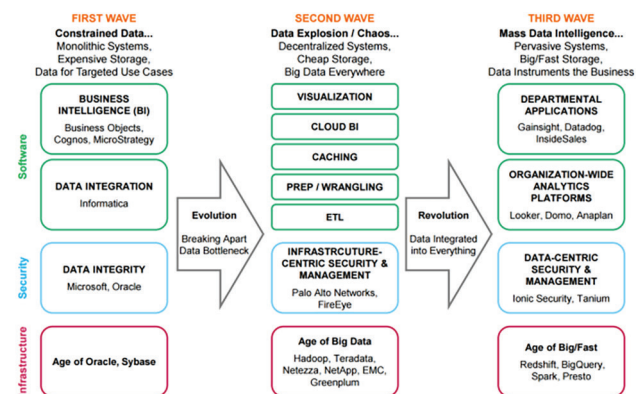
**Critical Information Infrastructure** and how the private sector gets involved operationally. CII may be in public or private ownership. CII is defined very broadly, exactly how otherwise innocuous infrastructure (eg someone's laptop) may be designated as CII needs to be based on an objective process.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

## (c) Personal Data Protection (sometimes referred to as 'Data Privacy')

### (i) About data

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

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



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

## Data as an asset

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

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

SOURCE: McKinsey Global Institute analysis

## (ii) Data Hub Fundamentals

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

## (iii) Personal Data Protection Act

The Personal Data Protection Act (PDPA) came into force partially in late May 2019, with the balance to come into force 1 June 2022 (after two extensions).

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

EABC has been involved in all relevant stages of consultation since 2015, ran a seminar with experts in late 2018 and throughout 2021 engaged with the interim office of PDPC on consultation via public hearing and detailed written submissions at concept level in three groups of topics.

The 2019/2020 European Business Position Paper included details on these major topics:

- Governance
- Consent
- Cross border rules:
- Nationalisation/Localisation in some jurisdictions
- Extra-Territoriality:
- Right to access/correct/delete
- Administrative burden

In January 2022 the PDPC was announced, with ten nominated members and six ex-officio members. Expected in early 2022 is the release of draft regulation for public hearing based on the results of the public hearings at concept level conducted in 2021.

Like the GDPR, the PDPA is expected to be a game-changer in terms of how business is carried out. Market education will be essential to ensure that it does not become a burden.

### **(3) Digital Government**

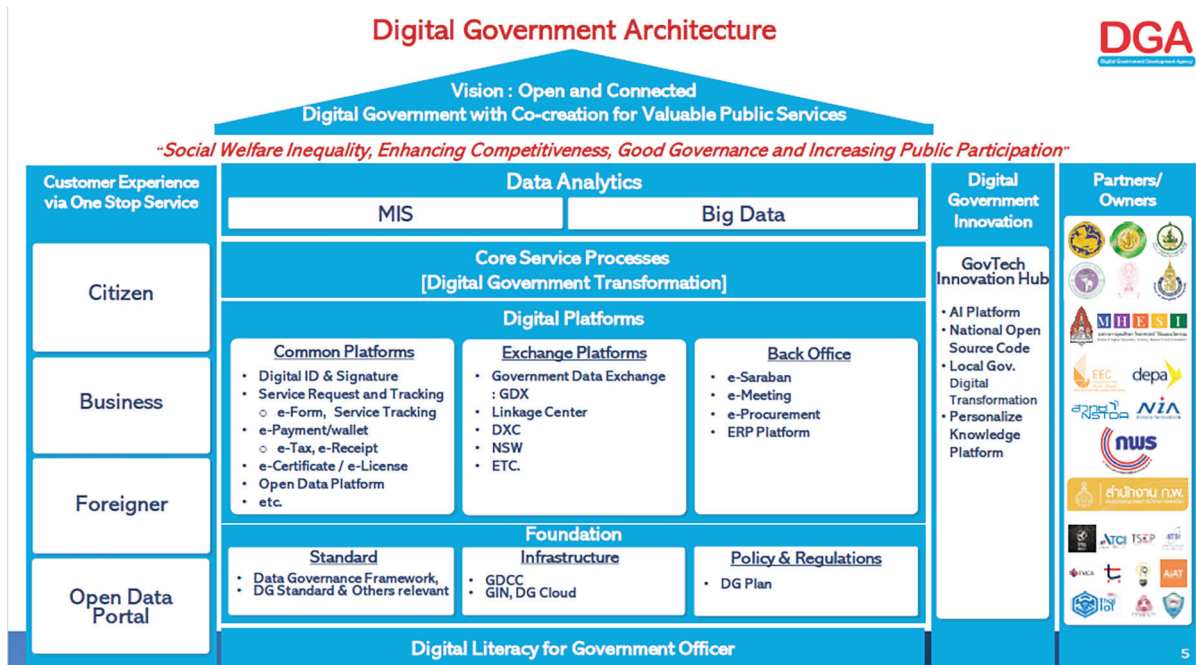
Until recently, just about all 'eGov' developments were done by agencies on a 'silo' basis. This meant multiple log-ins, lack of one-stop service and in many cases an experience more like 'e filing' rather than real on-line interaction with intelligent systems.

A strategy for a 'whole of government' architecture with inter-agency interoperability, Single Sign On with phased development of inter-Agency and Citizen to Government (C2G) capability, building to this architecture. The digitalisation steps are:

- i) Removal of unwanted and unnecessary regulation (see the CSI chapter about Fast Track Regulatory Reform)
- ii) Process re-engineering to meet the business objectives of government (government as user)
- iii) Interoperability and Single Sign on
- iv) A National ID which all users can avail themselves of

Thailand has ranked relatively poorly on digital government development. While areas such as Bank of Thailand may be leaders, others such as Immigration still rely on large amounts of paperwork. Downloadable apps are popular but often poorly conceived.

The Digital Government Agency (DGA – formerly Electronic Government Agency) is addressing this challenge which will be a major effort. A National ID programme with a National ID card should turn out to be positive development. Security and privacy are large issues. DGAs plan at November 2021:



Unfortunately the Licence Facilitation Act (while offering some good steps towards standards and reducing corruption and has been positive in some sectors) 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.

Others such as the OPDC (Office of Public Sector Development Commission) also work towards this effort. DGA is developing a ‘foreigner portal’ for launch in phases 2023 – 2027.

Digitalising Thailand’s public sector will take time. EABC is engaged through regular consultation and recommendations.

### Recommendations about Data Governance, Digital Government

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

#### (4) Dispute resolution

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

Amendments in 2019 to the Arbitration Act and the availability of smart visas for foreign arbitrators are positive steps. As at January 2022, the status of smart visas was being reviewed in light of the Long Term Resident category. For more see CSI chapter.

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

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

Intellectual Property Rights (IPR) are an important aspect of building a knowledge and innovation economy and in supporting investor confidence overall. Please see the IPR chapter. There are two key IPR issues relevant to Digital Economy:

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

Remedies include a range of measures:

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

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

#### Recommendations about IPR:

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

#### (6) Skills in the Digital Economy; Digital Literacy

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

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

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

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

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

In the Ministry of Education, the Office of Vocational Education (OVEC) is responsible for DEEP (Digital Education Excellence Platform), and promotes education on digital skills. EABC met with OVEC in January 2022.

EABC recommends:

- 1) Revised IT education with emphasis of soft skills such as problem solving and project management, critical thinking skills; changes from early primary (to develop enquiring minds); learning English
- 2) IT Competency Framework and a holistic and strategic approach to skill gaps; identification of which specialist areas might be areas of special comparative advantage and excellence; Revise STC process to include a competency framework
- 3) Avoiding Thai-specific certifications (unless it is about something which is uniquely Thai) but better adoption and recognition of global standards
- 4) Major revisions to work permit and visa regulation; Smart Visa a start
- 5) Personal tax incentives.
- 6) Twinning arrangements with foreign leading institutions. A non-Thailand example (just an example) might be LARC CMU- SMU - <https://larc.smu.edu.sg/> . CMKL University, a joint institute established by Pittsburgh's Carnegie Mellon University (CMU) in the US and King Mongkut's Institute of Technology University Ladkrabang (KMILT) started in 2018 <https://www.cmkl.ac.th/about-us>.



- 7) Specialist academic–industry collaboration (there are several good examples)
- 8) Support for private-sector in-house training but with a development path
- 9) Recognition of nation-wide programmes, not just having to be located in one place.

### **Work Permit and Visa; Smart Visa, Long Term Residents**

– The Cross Sectoral Issues (CSI) Chapter of this Position Paper makes recommendations on work permit and visa reform. These include a change to the law to change the definition of “work” and having an easy to obtain business visa (or being ‘visa free’), the idea being to limit ‘work’ to real local employment-type activity, whereas ‘business visitors’ would cover a wide-range of activities normally associated with doing business, including meetings of all kinds, seminars and conferences of all kinds, trade fairs and exhibitions of all kinds and covering all kinds of activity. In the Digital Economy / ICT sectors, skills need to be deployed at short notice and often for very short periods (eg configuring a customer set up in a data centre; working on an agile-based software development project); the current system does not support this well. The current visa and work permit system is broadly out of line with Thailand 4.0 goals. Exceptions such as Smart Visa do exist but take up has been low and the instrument is being reformed. At January 2022 the proposed Long Term Resident

### **Digital Literacy**

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

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

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

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

- i) technology competency, which is the use of digital technology;
- ii) information literacy, which is the ability to locate, identify, retrieve, process and use digital information optimally; and
- iii) media literacy, which enables us to comprehend, contextualise and critically evaluate information, as well as to create and communicate content effectively across digital media platforms.
- iv) cyber wellness, includes taking personal responsibility to use the internet for the good of the community, and understanding the risks of online dangers and negative online behaviours.

(source imda.gov.sg)

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

### ***A definition of Digital Literacy more focused on computer skills***

Digital literacy is about the ability to use computers, on-line tools and interact with others digitally. EU –

## DigComp – Digital Competency for Citizens<sup>9</sup>

- 1) Information and data literacy: Articulate information needs, Locate and retrieve digital information
- 2) Communication and collaboration: To interact, communicate and collaborate
- 3) Digital content creation: To create and edit digital content , integrate
- 4) Safety: To protect devices, content, personal data and privacy
- 5) Problem solving: To identify needs and problems and solve

### Recommendations about skills, capacity building and digital literacy

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

## (7) Procurement; Corruption

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

These aspects continue to need resolution:

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

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

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

- Inflated supply price to allow enough 'fat' for reallocation. Depending on the industry and the agency involved, this could be for example as high as 30%

<sup>9</sup> <https://ec.europa.eu/jrc/en/digcomp/digital-competence-framework>

- Offshore-to-offshore transfers, usually to related party bank accounts bearing names not associated with the actors
- Undisclosed cash payments often via middlemen
- Benefits-in-kind

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

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

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

Not so companies in some jurisdictions without any such extra-territorial anti-corruption law. European and other western companies may be at a commercial disadvantage in relevant competitions. The solution is to enforce anti-corruption. Unfortunately as the CSI Chapter notes, Thailand's Corruption Perception Index ranking has slipped in the past four years, to 110th for 2021. See CSI Chapter for more.

## (8) A tsunami of regulation in 2021; MSM approach

In 2021, a large number of regulatory changes were made. Some suffered from inadequate public hearing, one had none, but the PDPA concepts had quite thorough public hearing. The MSM (Multi-Stakeholder Model) standard does not apply to all:

- i) Digital Platforms Governance Decree (see this Chapter for more)
- ii) Personal Data Protection Act, to be in force 1 June 2022 with subsidiary rules etc being developed at January 2022.(see this Chapter for more)
- iii) Cybersecurity Act, in force but with subsidiary legislation under development and the NSC in place (see this Chapter for more)
- iv) eCommerce Tax in force 1 September 2021 with a Guideline issued July and many points still needing to be clarified, which will apply to some of the very DSP Operators providers contemplated by the Decree; requiring VAT registration but which does not require local commercial presence.
- v) Amendments to the Copyright Act under which ISPs (Intermediary Service Providers), which would include some of the very DSP Operators contemplated by the Decree. There is a new longer list of requirements an ISP must meet in order to enjoy 'safe harbour' or exemption from copyright breach where an ISP is carrying out its normal functions in good faith. For more, see the IPR Chapter.

- vi) Computer Crimes Act also similarly provides safe harbor or exemptions for intermediaries 2017 and also governs many other on-line transactions. The CCA distinguishes between ‘computer data’ (content) and ‘computer traffic data’ (metadata). Somehow a ‘service provider’ which could be almost anyone providing access, is required to maintain metadata records and may be required to disclose it. Accurate content conclusions based on metadata are unlikely. A Data Retention Notification 2021 replaces its 2007 original. There is wide reach such that
- vii) Legislation governing payments.
- viii) Proposed changes to 2018 Trade Competition Guidelines under the Trade Competition Act OTCC; reviewed in 2021
- ix) Direct Sales and Direct Marketing Act (DSDMA) under which a licence often referred to as an eCommerce licence.

The term ‘service provider’ appears in many, used in different ways. Ensuring that the law and regulation operates without conflict or inconsistency is needed.

### (9) Jurisdictional issues / conflict of laws

The on-line world gives rise to many complex jurisdictional issues. EABC is privileged to work with the Internet & Jurisdiction Policy Network<sup>10</sup> (Paris headquartered) on relevant issues.

### (10) Software Piracy

The software privacy situation has improved. Government supply requirements have helped.

<sup>10</sup> <https://www.internetjurisdiction.net>

Key Findings<sup>11</sup> :

- i) **Use of unlicensed software, while down slightly, is still widespread.** Unlicensed software is still used around the globe at alarming rates, accounting for 37 percent of software installed on personal computers – only a 2 percent drop from 2016.
- ii) **CIOs report unlicensed software is increasingly risky and expensive.** Malware from unlicensed software costs companies worldwide nearly \$359 billion a year. CIOs report that avoiding data hacks and other security threats from malware is the number one reason for ensuring their networks are fully licensed.
- iii) **Improving software compliance is now an economic enabler in addition to a security imperative.** When companies take pragmatic steps to enhance their software management, they can increase profits by as much as 11 percent.
- iv) **Organizations can take meaningful steps today to improve software management.** Studies show that organizations can achieve as much as 30 percent savings in annual software costs by implementing a robust SAM and software license optimization program.

For larger companies, SET listed companies and government, the situation with software piracy has improved. Cloud based services (eg Microsoft 365) means better compliance, as does location-based pricing (prices better in Thailand than say Europe). But many SMEs cut corners – eg:

<sup>11</sup> <https://gss.bsa.org/>

- i) Underlicensing – too few
- ii) Wrong geography
- iii) Wrong version – eg using student version for business purposes

B2B – software developers and SIs noted the complex issues in ensuring that vendor licences were understood by the developers' / SIs clients.

In Thailand, Copyright in the software belongs to the developer employee unless agreed otherwise. There is a practice as we understand it for DIP (MOC) not to ask about which parts might be created and which are integrated.

## D. Applications and Digital Services

### Applications and Digital Services:

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

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

### (1) Platforms as the new FDI

Platforms allow business to be operated from just about anywhere, globally.

There are many possible functions of platform – merchant, marketplace, social media, other intermediation services, search, number independent communications (IM, voice/video), video streaming, etc.

EABC supports the general purpose and intent about promoting ethical business, consumer protection, a pro-competitive marketplace and respect for various commercial rights and obligations and individual rights. EABC has also supported and promoted ease of doing business for many years. Our approach is about balance so that all communities can operate with confidence and Thailand is a respected and attractive on-line and digital marketplace. Much of this is about creating trust.

The Digital Platforms Governance Decree draft was issued mid 2021 but suffered from rushed public hearing. As at January 2022 it was still be being reviewed and revised. Major issues include:

- 'Light touch' regulation by registration not licensing, but once registered a number of obligations apply
- Rules which may not work well operationally being imposed.
- Scope and reach too broad and the Decree may be ultra vires its base law, the Electronic Transactions Act
- Presence of a Representative in Thailand who would be fully responsible, which could result in Permanent Establishment. The idea of world trade in services is to respect the four modes and not to require Commercial Presence (mode 3) in all circumstances.

International precedents relied on include the EU's Digital Services Act and Japanese legislation. What is right for Thailand is being resolved in Thailand with engagement of relevant operators and users.

## **(2) Electronic Signatures / Digital Signatures**

The legal enablement of electronic signatures has been in the Electronic Transactions Act since 2001. ETDA issued a Guideline about electronic signatures and digital signatures in 2021.

Unfortunately practice both in the private and public sectors to rely on these tools is slow and weak. Banks for example still rely heavily on hard copy, wet signature. The practice is out of line with Thailand's 4.0 aspirations and claims to digital leadership.

Third party platforms are readily available for digital signatures.

A stronger mandate for use of electronic signatures is needed, with education in the private and public sectors.

## **(3) Fake News; negative on-line comments**

The world is developing responses to challenges brought about by the accelerated ability of the on-line world including social media's carriage of information, influence and algorithms which amplify messages. Propaganda is not new but there is now a new threat. Minimising fake news without impairing the important aspects of free speech is a worthwhile economic and social objective, in

keeping with the 'Trusted Internet' concept described in this chapter, which relies on a Multi-stakeholder model (MSM) of governance.

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

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

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

Second, who is to be protected by any Fake News policy needs to be clear. The system cannot be only about protecting the state, or a government, or political leaders. The protection needs to be about institutions (eg trust in the press; the State of Thailand; the Thai economy; Thai society), persons (citizens, residents, civil society groups, private entities such as companies and trade associations). While not a substitute for defamation remedies, corrective action and other aspects need to be available where material harm has occurred or is likely (the second element in the concept of 'Fake News').

EABC recommends a number of measures (see the 2019/2020 European Business Position Paper for details):

- 1. Education and training –
- 2. Fact checking –
- Greater support and respect for quality mass media and professional journalism.
- 4. Role of larger tech firms / social media
- 5. Corrective statements .
- Civil society and citizen initiated responses
- Legislative changes
- Clarity on remedies.

The world is grappling with negative on-line comments and trolling. Should platforms be ‘publishers’ or just intermediaries? A restaurant or hotel’s business can be greatly impacted through such comments. If they are anonymous, they can too easily be made with no responsibility. A review is needed to work out a fair regime which renders the comment maker responsible but does not impair free speech.

Defamation is a cumbersome remedy, some other approach is more likely to be better. See the CSI chapter for more on defamation.

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

- Fake News needs a package of measures; the outstanding remedy being education; MSM principles are needed.
- The Fake News Centre should not become an arbiter of truth.

- Fact Checking bureaux and higher investigative journalism should be supported.
- Resolution of issues about negative on-line anonymous commentary

#### **(4) FinTech & other new tech; IT Start-Ups**

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

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

**IT Start-Ups** have seen growth in recent years due to real focus from the private and public sectors. Co-working spaces and better availability of funds is a big boost. Availability of finance has improved although it is still limited (see for example the SME chapter for crowd funding and peer-to-peer lending developments). The biggest single issue for Start-Ups is clearing the regulatory burden, more of which see generally in the ‘doing business’ aspects of the Cross Functional Issues (CSI) chapter. The tendency towards gravitating to Singapore

or Hong Kong once some development is reached, is still strong.

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

The EU Business Avenues to S E Asia (ICT) annual programme (at time of publication, done 2017, 2018, 2019 and 2020) which saw 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. The 2020 event was done virtually. EABC encourages the EU to re-commence the programme.

#### **Recommendations about New Tech and Digital Government:**

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

#### **(5) e-Commerce, ePayments**

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

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

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



It is noted that while SWIFT addressed the B2B layers, ANT Financial Services (AliPay is brand name) effectively outsources RMB payments for settlement in China. That is a boon for Chinese tourism and Chinese tourist in Thailand (plus other users). The AliPay name is seen at retail Points of Sale in many outlets in Thailand. It is a B2C and P2P (Peer to Peer) applications.

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

Prompt Pay has become a useful way for individuals and consumers to make quick and easy payments. Prompt Pay corporate uses Tax ID. The tie up with Pay Now (Singapore) enables low cost, fast foreign transfers with reasonable FX rate.

## (6) eCommerce Tax

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

After some false starts, a VAT based eCommerce tax came into force in September 2021. Foreign providers with over THB 1.8m in Thailand-based revenues must register for VAT.

Under the simplified system (which is condoned by OECD) there is no tax neutrality (no input tax credit). The foreign platform must pay VAT on the transaction and could increase its prices but does not issue VAT certificates.

## Recommendations about eCommerce and eCommerce Tax:

- eCommerce registration needs to be made more attractive.
- The eCommerce Tax has some operational issues and lack of clarity. These points need resolving.

## (7) Digital Assets

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

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

The key difference between these two types of assets is that Cryptocurrencies are created in order to serve a particular purpose as a medium for exchange, which might be exchange for goods, services or other rights, or to be used as consideration for trading with other Digital Assets. On the other hand, Digital Tokens are generated to be used as a determinant of rights, which could be rights as an investor or the right to receive specific goods or services.<sup>12</sup>

Thailand's approach to crypto is relatively lenient.

### (8) Digital Vaccine certificates (or 'Vaccine Passports')

An inoculation certificate or vaccine certificate was done on a WHO (or MOPH) yellow booklet. The digital form is being developed (i) globally (ii) regionally and (iii) nationally. Being vaccinated for COVID 19 is more and more a requirement for entry and travel. EABC recommends that divides in society should be avoided as much as possible in these developments. Safe alternatives and fall backs should be possible wherever feasible.

What are needed:

- Outbound travel from Thailand – use of Thailand-issued vaccination certificates which can be uploaded to foreign local ID, tracing or other apps.
- Inbound to Thailand – recognition of foreign-issued vaccination certificates.

At the global level, the ICSO and WHO are developing a model using passport type technology.

1. VDS-NC is a **specific token for cross-border travel**.
2. **Digitally signed 2D-barcode**, to ensure the data is authentic and not been modified.
3. **Relies on an existing ICAO trust model** used for e-passports since 2004 deploying **two-level Public Key Infrastructure (PKI)**.
4. **Flexible** – root certificate (CSCA) does not have to be the same as for e-passports.
5. **Easily readable by most barcode scanners**.
6. **Offline verifiable**, without the need for an online-connection.

In January 2002, the EU endorsed the Thailand Digital Health Pass (using the Mor Prom app) as equivalent to the EU Digital COVID 19 Clearance Certificate which is good in the EU 27 member states and some 30 countries outside the EU which recognize the EU certificate.

These developments will take time for full global compatibility. It is important to conceptualise them clearly.

### (9) COVID 19 tracing and tracking apps and premises entry tools

EABC has been involved in 2020 and 2021 in assessing various digital tracing and tracking platforms, and health management platforms. Given the fast pace of development and major changes in acceptance, EABC has not included details in this Position Paper. In many parts of the world, such apps have not worked out. One message is to keep such apps and tools with simple purposes.

<sup>12</sup> Baker McKenzie September 2018

## E. ANNEX to Digital Economy/ICT Chapter

Some digitally-related ASEAN instruments.

- (a) **ASEAN eCommerce Agreement** (Nov 2018) <https://static1.squarespace.com/static/5393d501e4b0643446abd228/t/5c99e02aeef1a10aa126c9a6/1553588313303/20190306035048.pdf>
- (b) **Framework on Digital Data Governance** (Dec 2018) – see 18th TELMIN statement, includes cross border issues [https://asean.org/storage/2018/12/TELMIN-18-JMS\\_adopted.pdf](https://asean.org/storage/2018/12/TELMIN-18-JMS_adopted.pdf)
- (c) **Masterplan on ASEAN Connectivity 2025** (Aug 2016) <https://asean.org/wp-content/uploads/2016/09/Master-Plan-on-ASEAN-Connectivity-20251.pdf> <https://connectivity.asean.org/>
- (d) ASEAN ICT Masterplan 2020 AIM 2020 (2016) [https://www.asean.org/storage/images/2015/November/ICT/15b%20--%20AIM%202020\\_Publication\\_Final.pdf](https://www.asean.org/storage/images/2015/November/ICT/15b%20--%20AIM%202020_Publication_Final.pdf)
- (e) **AEC Blueprint 2025** (2015) - [https://www.asean.org/storage/2016/03/AECBP\\_2025r\\_FINAL.pdf](https://www.asean.org/storage/2016/03/AECBP_2025r_FINAL.pdf)
- (f) ASEAN Digital Integration Framework Action Plan (DIFAP) [https://asean.org/storage/2018/02/AECC18-ASEAN-DIFAP\\_Endorsed.pdf](https://asean.org/storage/2018/02/AECC18-ASEAN-DIFAP_Endorsed.pdf)
- (g) RCEP (not ASEAN but relevant) Text and associated documents: <https://www.dfat.gov.au/trade/agreements/not-yet-in-force/rcep/rcep-text-and-associated-documents>. Trade in Services – Chapter 9 Telecommunications Services - Annex 8A <https://www.dfat.gov.au/sites/default/files/rcep-chapter-8-annex-8b.pdf> Chapter 12 – eCommerce <https://www.dfat.gov.au/sites/default/files/rcep-chapter-12.pdf>
- (h) **ASEAN Framework on Personal Data Protection 2016** TRPC [www.trpc.biz](http://www.trpc.biz) did ‘**The TRPC Data Protection Index 2020 report**’ <https://trpc.biz/the-trpc-data-protection-index-2020/> based on the seven Principles of Personal Data Protection in the ASEAN Framework on Personal Data Protection 2016.
- (j) Statement on Cybersecurity Co-Operation <https://opengovasia.com/asean-leaders-issue-statement-on-cybersecurity-cooperation/>
- (k) ASEAN Trade in Services Agreement 2019 [http://agreement.asean.org/search/by\\_pillar/2.html](http://agreement.asean.org/search/by_pillar/2.html) Supercedes AFAS; final Package of AFAS commitments was 10th, in 2018. <http://agreement.asean.org/media/download/20190215091942.pdf>
- (l) ASEAN GRP Good Regulatory Principles 2018 Similar to APEC GRP <https://asean.org/storage/2017/11/ASEAN-GRP-Core-Principles-FINAL-ENDORSED.pdf>
- (m) “**Digital ASEAN**” initiative WEF <https://www.weforum.org/projects/digital-asean>. Public/private – four task groups.
- (n) **ASEAN Digital Masterplan 2025** <https://asean.org/storage/ASEAN-Digital-Masterplan-2025.pdf>
- (o) **ASEAN Data Management Framework (DMF)** approved at the First ASEAN Digital Ministers’ Meeting on January 21 and 22, 2021. [https://asean.org/storage/2-ASEAN-Data-Management-Framework\\_Final.pdf](https://asean.org/storage/2-ASEAN-Data-Management-Framework_Final.pdf)
- (p) **Model Contractual Clauses for Cross Border Data Flows (MCCs)** were approved at the same meeting, in order to promote the secure free flow of data between ASEAN countries, including Thailand. [https://asean.org/storage/3-ASEAN-Model-Contractual-Clauses-for-Cross-Border-Data-Flows\\_Final.pdf](https://asean.org/storage/3-ASEAN-Model-Contractual-Clauses-for-Cross-Border-Data-Flows_Final.pdf)

# Energy

## SUMMARY OF RECOMMENDATIONS

**1. Greater reliance on renewables is needed under power plans. Inevitable there will be greater reliance on LNG at least for a period however but alternatives will be increasingly attractive.**

### **2. Electricity Generation**

2.1 Amount of electricity generated (capacity vs. peak demand): Given that Thailand's electricity consumption will grow, additional capacity will need to come online.

2.2 The global energy transition will likely involve a greater dependence on electrification of other sectors, such as transport, manufacturing, heating and cooling, etc. Thailand is no exception, and Thailand's electricity demands will certainly continue to rise.

### **3. Greenhouse Gas Targets and Other Measures**

3.1 A more ambitious agenda and concrete steps to facilitate the energy transition represent a major economic opportunity and would also improve Thailand's standing as a regional leader.

3.2 Carbon pricing: Care must be taken to ensure carbon pricing policies are implemented in a responsible manner, taking into account the views and interests of all stakeholders.

3.3 European Green Deal, CBAM: Compatible policies are encouraged.

3.4 Thailand needs to be aware of the CBAM and similar policies in other jurisdictions and plan accordingly. Continuing to rely on carbon intensive fuels to generate electricity could put Thai industries at a competitive disadvantage if the CBAM and similar policies are implemented.

### **4. Areas for Further Development**

4.1 Supporting energy transition: Some initiatives will require governmental fiscal support, which is obviously complex and requires a complete understanding of public finances which is beyond the scope of this position paper. However, many policies present minimal costs to the treasury but could have an outsized impact on reducing carbon emissions.

4.2 Increasing solar deployment: appropriately tailored policies to promote rooftop solar should be devised to improve penetration in the residential market and commercial properties in city centres.

4.3 Carbon Capture, Utilization and Storage: An alternative policy tool could be utilizing tax incentives through the BOI to encourage utilization of BECCs.

4.4 Green hydrogen production: Thai government should enact clear guidelines to provide investors certainty with how the market will be regulated positively.

- 4.5 EVs and EV infrastructure: MEA and PEA could take the lead in rolling out charging infrastructure. Alternatively, a licensing regime could be established to permit private parties the ability to develop the necessary charging infrastructure.
- 4.6 Alternative storage: The National Energy Plan should plan for greater use of energy storage coupled with solar to realize a speedier transition from fossil fuels.
- 4.7 Unlocking rooftop solar in the residential sector: The government should explore ways to encourage financing in this sector, such as by offering tax credits to homeowners and/or credit default insurance schemes to stimulate private finance.

## A. Current Energy Situation

### (1) Thailand current and forecast energy demand

Thailand's overall energy consumption has expanded from 1.3 million terajoules (TJ) in 1990 to approximately 4.3 million TJ in 2019. However, since 2013, the rate of overall consumption has slowed, and much of the growth has been driven by increasing electrification.<sup>1</sup> Electricity consumption has expanded from 140.4 TWh in 2009 to 200.1 TWh in 2019, representing a 42.5% increase. If Thailand's electricity sector expands at the same rate over the next decade, the Thai economy will consume 285.1 TWh in 2029; however, given the country's stated policies for the electrification of the transportation sector in the coming decade, it is likely that this figure is an underestimate.

### (2) Overview of supply side

The Thai economy's energy demands are met largely from the supply petroleum products and electricity.

<sup>1</sup> International Energy Agency, *Total Consumption by Source, Thailand 1990-2019* (<https://www.iea.org/countries/thailand>).

### (a) Amount of petroleum consumed / imported

Thailand is a net importer of both crude oil and refined oil products. Natural gas is sourced both domestically and through imports, which arrive through pipelines from Myanmar and as liquefied natural gas ("LNG"). With domestic gas supplies being depleted and limited opportunities for new investment in the upstream sector, LNG looks likely to play an increasingly important role in supplying Thailand's energy needs in the coming decades.

In 2020, Thailand imported 822.6 million barrels of oil equivalent per day ("MBOEPD"), alongside 1,126.2 MBOEPD of refined oil products. By comparison, only 100.3 MBOEPD of crude oil was produced domestically for local refining. Meanwhile, the Thai economy consumed a total of 815.2 MBOEPD of refined oil products.<sup>2</sup>

As for natural gas, there was 3,262 million standard cubic feet per day ("MMSCFD") produced in 2020 domestically, and a total of 1,437 MMSCFD imported. LNG imports have been steadily increasing since the receiving terminal at Map Ta Put industrial port in Rayong began operations in

<sup>2</sup> Department of Mineral Fuels, Ministry of Energy. *Annual Report, 2020*, at page 48

2011; in 2020, 743 MMSCFD of LNG was imported. As Thailand's domestic reserves of proven, probable and possible natural gas are being depleted, LNG will continue to play an important role in satisfying Thai demand for natural gas.

## (b) Electricity Generation

- i) Amount of electricity generated (capacity vs. peak demand)

As of August 2021, Thailand's installed grid capacity was approximately 46.1 GW.<sup>3</sup> This does not include very small power producers ("VSPPs"), which are defined as power projects with an installed capacity of less than 10 MW. The figure also does not include so-called "behind the meter" distributed generation, such as power supplied from natural gas fired cogeneration plants on industrial estates or rooftop solar installations.

Peak demand for electricity in 2021 was 30,135 MW.<sup>4</sup> The discrepancy between peak capacity and peak demand is welcome, though it should be noted that the most recent version of the Power Development Plan ("PDP") contemplates the retirement and decommissioning of 25,310 MW of existing installed capacity by 2037. Given that Thailand's electricity consumption is likely to continue to grow, additional capacity will need to come online. Indeed, the PDP envisions a further 56,431 MW of new installed capacity being built by 2037.<sup>5</sup>

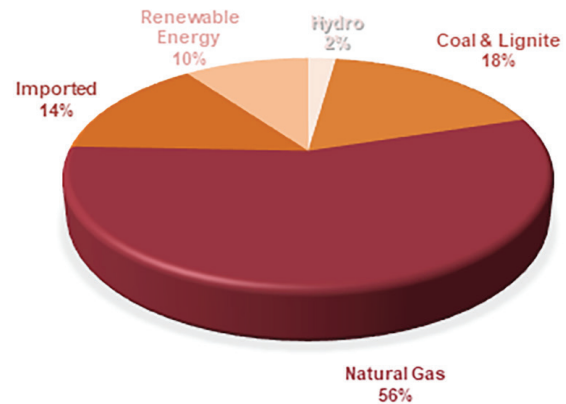
<sup>3</sup> Energy Policy and Planning Office, Ministry of Energy. *Electricity statistics* (<http://www.eppo.go.th/index.php/en/en-energystatistics/electricity-statistic>).

<sup>4</sup> *ibid.*

<sup>5</sup> International Trade Administration, Department of Commerce (United State of America). *Thailand – Country Commercial Guide, Energy, 15 August 2021* (<https://www.trade.gov/country-commercial-guides/thailand-energy>).

Thailand consumed 206 TWh of electricity in 2020; overall electricity consumption rose 25% from 2010 to 2020.<sup>6</sup> The global energy transition will likely involve a greater dependence on electrification of other sectors, such as transport, manufacturing, heating and cooling, etc. Thailand is no exception, and Thailand's electricity demands will certainly continue to rise.

- ii) Sources of Fuel for Electricity Generation  
Thailand's main sources of electricity are set out in the following graph:<sup>7</sup>



### (i) Traditional fuel sources (including 'old' renewables)

#### Coal and Lignite

Coal and lignite continue to play a key role in Thailand's energy mix, accounting for 17.9% of electricity generated in 2020.<sup>8</sup> This will need to decrease if Thailand is going to meet its goal of achieving net zero emissions by 2050.

<sup>6</sup> *Supra* note 3.

<sup>7</sup> *Supra* note 3.

<sup>8</sup> *Supra* note 3.

### Hydroelectricity

The Electricity Generating Authority of Thailand (“EGAT”) owns and operates 14 hydroelectric dams in Thailand, accounting for 4.539 TWh of electricity generated in Thailand in 2020.<sup>9</sup> This currently amounts to only around 2% of Thailand’s overall electricity supply.

### Nuclear

Thailand does not have any nuclear power plants, although government plans in 2015 anticipated the development of some nuclear capacity by the mid-2030s. Those plans have since been abandoned, and it is unclear whether the government is contemplating the future deployment of nuclear. As nuclear power emits nearly no carbon, this may assist the government in reaching its emission targets.

## **(ii) New Renewable Energy Sources**

### Solar

Thailand benefits from elevated year-round solar radiation levels, resulting in the maintenance of many Thai solar energy plants/farms. Thai solar capacity has consequently grown to more than 7,178 projects with capacity greater than 3,866.49 MW.<sup>10</sup> This includes more than 688 MW of behind the meter capacity from more than 1,121 projects, although this does not include projects with an installed capacity of less than 1,000 kVA, meaning the actual figures are greater than these. The current PDP aims to increase solar capacity to 10 GW by 2037.

<sup>9</sup> *Supra note 3*

<sup>10</sup> *Energy Regulatory Commission, licensee registrations (<https://www.erc.or.th/ERCWeb2/Default.aspx>).*

### Biomass

Through combustion, organic material can be converted into electricity or fuel. As of November 2021, Thailand had 272 biomass projects with planned or operating capacity of 3,908 MW.<sup>11</sup>

As Thailand’s economy is agriculturally based, it produces natural by-products that can be utilized as fuel in high volumes. Accordingly, the Alternative Energy Development Plan (“AEDP”) expects biomass to serve as an important source of Thai renewable energy in the years to come. Thailand produces approximately 18 million tons of agricultural waste a year, suggesting that biomass energy has huge potential.

### Biogas

Biogas is produced from the by-products of livestock farming, palm oil production, sugar factories, paper factories, ethanol factories and municipal solid waste. Methane is extracted and captured as the waste products decompose to be repurposed as fuel. As of November 2021, there were 199 biogas projects with aggregate capacity of 460.8 MW that were planned or operational.<sup>12</sup>

### Waste-to-Energy

Energy production from waste occurs by converting municipal solid waste (the “MSW”) into electrical energy through incineration via heat boilers and power turbines. Currently, there are 36 waste power plants in Thailand. The Alternative Energy Development Plan (“AEDP”) seeks to grow these numbers in the coming years and has set a target of 400 megawatts by 2025. The government has also chosen to include MSW energy in the country’s Feed-in Tariff scheme.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

### Wind

Studies on the potential of wind power have been conducted since 1975. As of September 2020, there are 34 wind projects with capacity of 1,522 MW in Thailand that have reached commercial operations. Most projects are located in the northeast of Thailand.

### About Hydrogen

As the World Economic Forum has noted<sup>13</sup>, hydrogen is emerging as one of the leading options for storing energy from renewables with hydrogen-based fuels potentially transporting energy from renewables over long distances – from regions with abundant energy resources, to energy-hungry areas thousands of kilometers away.

For more on hydrogen, see below under Part D – Issues for Further Development.

### **(iii) LNG and Natural Gas**

Natural gas is Thailand’s primary fuel for electricity generation, though its overall share in the electricity mix has been decreasing over the past decade. In 2020, natural gas generated 55.3% of electricity consumed in Thailand; this is a decrease from the 71.9% share that natural gas occupied in 2010 at its peak.<sup>14</sup>

Most of the natural gas used for electricity generation is still domestically produced, amounting to 67.3% in 2020. As proven and possible reserves are being depleted, however, Thailand would need to rely on greater imports of LNG in order to maintain current levels of domestic consumption.<sup>15</sup>

<sup>13</sup> <https://www.weforum.org/agenda/2021/12/what-is-green-hydrogen-expert-explains-benefits/>

<sup>14</sup> See fn 12.

<sup>15</sup> *Supra* note 2.

### **(iv) Cross-border purchases**

Approximately 14.3% of electricity consumed in Thailand is generated outside of the country; primarily, this energy is delivered from hydroelectricity projects in Laos PDR. This amount is likely to increase in the coming 10 – 15 years, based on agreements reached between the two countries.<sup>16</sup>

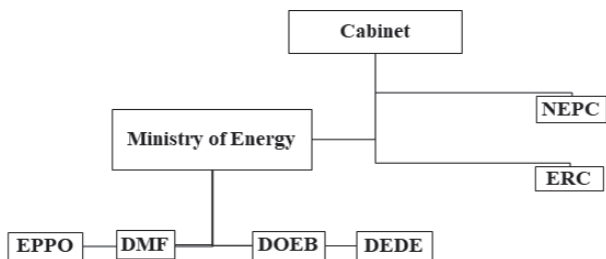
## **B. Market Structure; Policy and Regulatory Overview**

Thailand has developed distinct legal regimes relating to electricity generation and upstream petroleum operations. Governmental oversight in the energy sector is primarily administered through the Ministry of Energy (the “MOE”), which has a number of departments. The regulator with the most direct impact on the operations of independent power producers is the Energy Regulatory Commission (the “ERC”). As for oil & gas producers, the Department of Mineral Fuels (the “DMF”) is the primary regulator of sector-specific rules. There are various other departments and government agencies that have an impact on energy policies in Thailand, including the Department of Energy Business (the “DOEB”), the Department of Alternative Energy Development and Efficiency (the “DEDE”), the National Energy Policy Council (the “NEPC”) and the Energy Policy and Planning Office (the “EPPO”).

<sup>16</sup> *Supra* note 3.

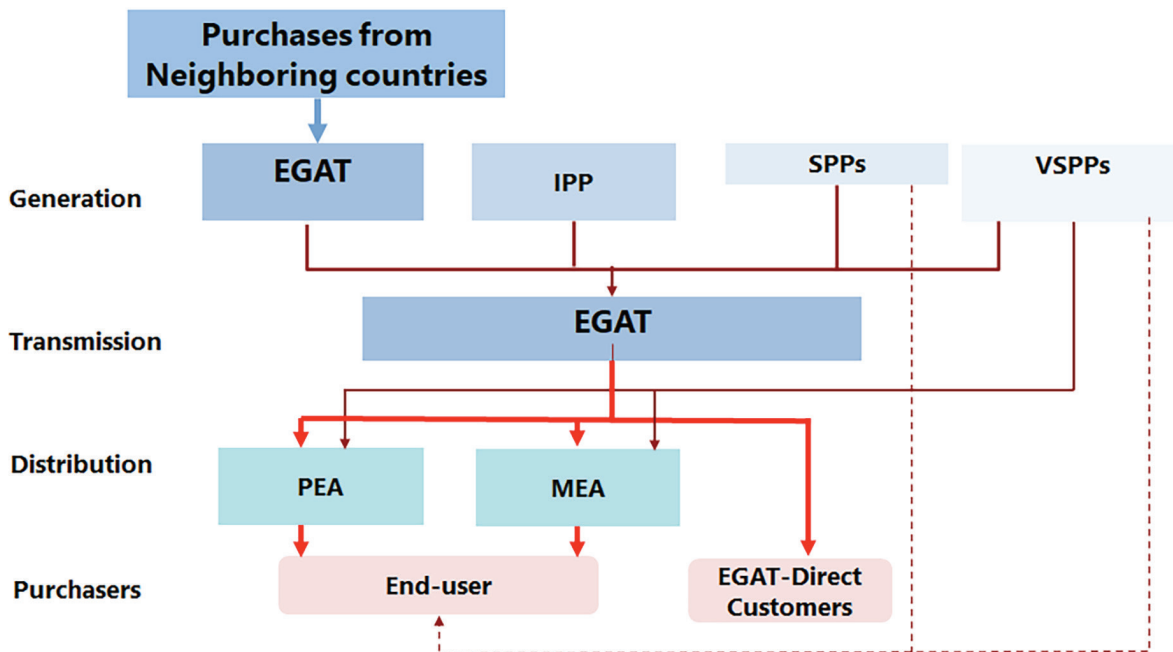


The relevant governmental authorities can be represented as follows:



### (1) Electricity market structure processes

Thailand’s electricity market is dominated by three state-owned utilities: the Electricity Generating Authority of Thailand (the “EGAT”), the Metropolitan Electricity Authority (the “MEA”) and the Provincial Electricity Authority (the “PEA”). A general illustration of the generation, transmission and distribution functions of the sector is set out below:



## (a) Electricity Generation

As its name suggests, EGAT is responsible for generating electricity at power plants which it owns and operates. In addition, EGAT purchases bulk electricity from private power producers and neighboring countries and sells such electricity primarily on a wholesale basis to the MEA and PEA.

Independent power producers (“**IPP**”), defined as power producers where the capacity of generation exceeds 90 megawatts (“**MW**”), sell electricity directly to EGAT. In addition, there are numerous small power producers (“**SPP**”), defined as those whose generating capacity is greater than 10 MW but equal to or less than 90 MW, which sell directly to EGAT as well as the PEA and MEA. Very small power producers (“**VSPP**”), those whose generating capacity is equal to or less than 10 MW, sell produced electricity directly to the PEA and MEA.

## (b) Transmission

EGAT currently maintains a monopoly on electricity transmission in Thailand. Transmission is often considered a natural monopoly.

## (c) Distribution

The MEA is responsible for electricity distribution to end users within the Bangkok metropolitan area, whereas the PEA handles this responsibility for the rest of the country. Distribution has not been liberalized, with the exception of rooftop solar and private purchases of electricity

generated on industrial estates by large-scale industrial users. Peer-to-peer electricity sales in Thailand will be tested in a regulatory sandbox environment.

## (2) Oil & Gas

Thailand has a well-developed legal framework for upstream exploration and production of petroleum. The discovery of commercially viable natural gas fields in the Gulf of Thailand in the 1970s and 1980s has been a significant driver of economic growth over several decades. The midstream and downstream markets are gradually liberalizing, adding complexity to the legal environment.

### (a) Upstream

The cornerstones of the legal framework governing upstream oil & gas production in Thailand are the Petroleum Act and the Petroleum Income Tax Act.

Exploration and production of petroleum is carried out by virtue of concession agreements and, from 2019, production sharing contracts. The MOE is the counterparty to concession agreements and production sharing contracts, while the government agency with primary responsibility to regulate the upstream market is the DMF.

### (b) Midstream and Downstream

The midstream and downstream markets for refined products derived from crude oil as opposed to natural gas are subject to different legal regimes and regulators.

### (i) Midstream natural gas

The midstream natural gas market is governed by the Energy Industry Act, which is the same statute governing electricity generation and distribution. The main regulator of the midstream market is the ERC.

Until recently, PTT had an effective monopoly on the distribution of natural gas to industrial customers and independent power producers. Since 2015, the ERC has taken steps to ensure that PTT develops a third-party access regime to its transmission pipeline network and LNG receiving terminal. PTT has since developed third party access codes (“TPA Codes”). The ERC has now issued Natural Gas Acquisition and Wholesale Licenses to third parties, thus increasing competition in the midstream gas market.

### (ii) Midstream and downstream refined crude

The midstream and downstream markets for refined petroleum products are governed by the Fuel Oils Control Act (“FOCA”) and the Fuel Oils Trading Act (“FOTA”), respectively. Both the FOCA and the FOTA are administered by the DOEB.

The FOCA sets out requirements relating to the storage and transportation of petroleum, including transportation via pipelines. There are currently few pipelines for refined petroleum products in Thailand. A pipeline stretching from the Map Ta Phut industrial port to a terminal in Saraburi is currently being extended to Khon Kaen, thus providing shippers greater access to the northeastern region of Thailand.

With respect to the downstream market, the FOTA sets out a licensing regime for the sale and transportation of refined petroleum products. The FOTA requires the DOEB to take a “hands on” approach to managing supply and prices of petroleum products nationwide.

## (3) Energy Planning and Policy

The Ministry of Energy is responsible for high-level planning in the energy sector. The main planning activities are carried out by EPPO, with final approval coming from the NEPC. Until 2015, Thailand adopted the Thailand Integrated Energy Blueprint or “TIEB” for short. Within the TIEB are specific policy and planning documents relating to each sub-sector, including the Oil Plan, the Gas Plan, the AEDP, the Energy Efficiency Development Plan and the PDP. These plans are complementary and provide an overall picture of the direction Thailand’s government is steering the energy sector.

Thailand is reportedly now styling its overarching policy and planning document in the energy sector as the “National Energy Plan” (“NEP”), which is expected to be approved and rolled out in 2022. The sub-sector planning documents will reportedly remain unchanged under the NEP.<sup>17</sup> Historically, the PDP has been the main policy document relating to electricity generation, transmission and distribution. It has been updated every 3 – 4 years, with the current PDP having been adopted in early 2019, with retroactive effect to 2018.

<sup>17</sup> *Supra* note 5.

#### (4) Thailand's 20-year Smart Grid Master Plan enables cost-effective technologies for a greener energy future

The Royal Thai Government has put a high priority on increasing “clean” renewable energy and reducing use of fossil fuels, launching a 20-year Smart Grid Master Plan in 2015 to support this goal. This 20-year Master Plan creates a roadmap to guide multi-agency efforts, particularly for Thailand's three power utilities, in their system and network modernization planning and investment.

In support of the Master Plan, Thailand's three electricity utilities, i.e. EGAT, the MEA and the PEA, have been conducting pilot projects under their areas of responsibility. Pilot projects of EGAT emphasize grid modernization, big data, grid connectivity, and renewable energy forecasting.

Meanwhile, pilot projects by the MEA and PEA focus on distribution system management, smart metering, and demand response.

- System Modernization or “Smart System”: ICT Integration; energy and distribution management systems; data communication systems; automation; wide-area monitoring, protection, and control systems.
- Consumer-Focused Reforms or “Smart Life”: Real-time pricing; efficient demand response; smart grid hardware and software; intelligent charging system; smart meter; meter data management.
- Increased Use of Renewable or “Green Society”: Reform of Thailand's grid code, renewable energy

forecast systems; development of energy storage systems to support renewable-based microgrids.

### C. Greenhouse Gas Targets and Other Measures

#### (1) Thailand's national plans and COP26

Thailand's updated nationally determined contribution (“NDC”) intends to reduce 20% of greenhouse gases from business-as-usual level by 2030.<sup>18</sup> As at January 2022 Thailand was in the process of updating NDC and the long-term low emissions development strategies (LT-LEDS)<sup>19</sup>, submitted earlier in October 2021, to reflect the new and more ambitious targets that PM Prayut announced at COP26 in Glasgow, to reach carbon neutrality by 2050, the net zero emissions targets by 2065, as well as to increase the NDC conditional target from 25% to 40% if adequate, timely and equitable technology transfer and cooperation, and access to green financing facilities are provided to Thailand.

Thailand was absent from the major agreements reached at COP26, including those to end deforestation and cut methane emissions by 30% by 2030. Thailand also did not commit to the phasing out of coal.<sup>20</sup> Thailand is working on these issues, but Thailand did not sign these because cabinet approval needed. Thailand stated that there was

<sup>18</sup> *Thailand's Updated Nationally Determined Contribution, made in accordance with Decision 1/CP.21 of the Conference of the Parties to the United Nations Framework Convention on Climate Change, 20 October 2020* (<https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Thailand%20First/Thailand%20Updated%20NDC.pdf>).

<sup>19</sup> *Thailand submitted the first version of the Mid-century, Long-term Low Greenhouse Gas Emission Development Strategy in Oct 2021* [https://unfccc.int/sites/default/files/resource/Thailand\\_LTS1.pdf](https://unfccc.int/sites/default/files/resource/Thailand_LTS1.pdf)

<sup>20</sup> “What was Thailand Doing at the COP26 Summit”, *The Diplomat*, Tita Sanglee, 11 November 2021 (<https://thediplomat.com/2021/11/what-was-thailand-doing-at-the-cop26-summit/>).

not sufficient time to secure that process. Following COP 26, Prime Minister Prayut tasked ministries and state enterprises with the revisions to the country's plans and commitments as to assess cost, feasibility and required actions before being put forward to Parliament and eventually becoming official policy; so that Thailand would be in a position to sign onto the COP26 agreements.

### ***Specifically on CO<sub>2</sub> and GHG :***

Thailand's GHG emissions have been cut down to 248.3 million tons CO<sub>2</sub>e,, and by comparison, Thailand's rate of GHG emissions per capita is lower than those of the EU, the US, China and the global average. On the other hand, Thailand's GHG emissions per Electricity Generation (kWh) and per GDP are higher than those of the EU and the US<sup>21</sup>, as Thailand at present has no nuclear power in the electricity mix on its grid.

'Net Zero emissions' and 'carbon neutrality' are slightly different concepts. At Thailand country level, the Net Zero Emissions target by 2065 means covering all greenhouse gases in all sectors, while the Carbon Neutrality target by 2050 means covering only CO<sub>2</sub> and only includes the energy sector.

At the corporate level, Net Zero Emissions Target is defined by the IPCC as a point when GHG emissions are balanced globally by GHG removals over a specified period. This means the same amount of GHG emissions is removed from the atmosphere by sequestration, elimination, utilization and removal by negative emissions technologies. By using negative emission technologies

<sup>21</sup> *Official Draft of Thailand's 13th National Economic and Social Development Plan, October 2021.*

such as direct air capture with carbon storage, permanent soil sequestration and afforestation, GHG can be removed from the atmosphere and stored on a long-term basis. On the other hand, Carbon Neutrality Target means a target to balance CO<sub>2</sub> only with carbon credits by using an offsetting mechanism to achieve climate neutrality. In other words, the net amount of CO<sub>2</sub> emitted is the same as the CO<sub>2</sub> compensated through the use of carbon credits.

In September 2021, before taking into account Thailand's new climate targets at COP26, the Climate Action Tracker described Thailand's policies as "critically insufficient" to meet the objectives set out in Paris Agreement.<sup>22</sup> This is especially problematic for Thailand, since it stands to suffer tremendous environmental impacts from global climate change. It will be difficult for Thailand to pressure other countries to do more to tackle climate change unless it can show greater concrete actions that demonstrate its commitment to addressing this issue.

It is important to note that neighboring countries with lower GDP per capita, such as Laos, Myanmar and Vietnam, are comfortable aiming for net zero emissions by 2050; given that Thailand is wealthier than these countries and has a far larger and more dynamic energy sector and active private sector, Thailand should be able to match these commitments. A more ambitious agenda and concrete steps to facilitate the energy transition represents a major economic opportunity and would also improve Thailand's standing as a regional leader.

<sup>22</sup> *Climate Action Tracker, Thailand, 15 September 2021 (<https://climateactiontracker.org/countries/thailand/>).*

## (2) Carbon pricing

Internalizing the costs of carbon pollution is seen as a key policy tool in nudging private parties to reduce or eliminate emissions. More than 70 jurisdictions around the world have already established carbon pricing schemes, representing approximately 20% of global emissions.<sup>23</sup> Carbon pricing is needed in order to ensure that certain business models in the green economy are viable, such as carbon capture, utilization and storage (“CCUS”) technologies. These will be discussed further below.

Carbon pricing is being considered by policy makers as a tool to promote Thailand’s drive towards net carbon neutrality. The International Energy Agency (“IEA”) published a report in April 2021 that modeled several carbon pricing scenarios and the resultant effects on Thailand’s CO<sub>2</sub> emissions.<sup>24</sup> Of particular note, the IEA found that a price of USD 40/t CO<sub>2</sub> would result in an 11% decrease in CO<sub>2</sub> emissions from the electricity generating sector by 2030 compared to a scenario with no carbon pricing. This may be an underestimate, as it may not fully take into account the likely virtuous cycle of the deployment of other green technologies.

Due to the existing power market in Thailand, an enhanced single buyer market, is still a highly regulated market structure which would make carbon pricing (e.g. emission trading scheme) in electricity sector ineffective. However, if the power sector in Thailand will be transitioned to using

a market-based approach, a carbon price could incentivize a switch from coal-fired electricity to solar power. Thus, electricity market reform is one of the key priorities that Thailand should work on.

Overall, care must be taken to ensure carbon pricing policies are implemented in a responsible manner, taking into account the views and interests of all stakeholders. If carbon is priced too low, it may not have much impact in changing polluters’ behavior; on the other hand, if a high carbon price is introduced too quickly, it may effectively render some businesses obsolete overnight. The Thai government should clarify its policy position on this issue and provide a roadmap for how carbon pricing may be implemented over the coming decade. It is advisable that any initial price on carbon be set low enough for businesses and consumers to adapt, with the aim of slowly increasing the carbon price to incentivize greener behavior. Any amounts collected by the government-run carbon pricing should be segregated to compensate affected persons.

Carbon pricing would likely either come in the form of a cap-and-trade scheme, or the implementation of a carbon tax. Most economists tend to prefer a carbon tax to a cap-and-trade scheme, as the implementation is generally more straightforward and does not require the creation of new government bureaucracies. At the moment, it is not clear whether Thailand is considering either carbon pricing mechanism.

<sup>23</sup> *British Columbia’s Carbon Tax, British Columbia* (<https://www2.gov.bc.ca/gov/content/environment/climate-change/clean-economy/carbon-tax>).

<sup>24</sup> *“The Potential Role of Carbon Pricing in Thailand’s Power Sector”, International Energy Agency, April 2021* (<https://www.iea.org/reports/the-potential-role-of-carbon-pricing-in-thailands-power-sector>).

### (3) European Green Deal, CBAM

The European Green Deal is a set of policies which would make the EU the first continent to be carbon neutral, and has other related objectives.

Announced in July 2021, the European Commission is currently proposing a carbon border adjustment mechanism (“**CBAM**”) to be implemented on imports to the European Union.<sup>25</sup> The CBAM is a response to European industry’s concerns that with carbon pricing in effect within the EU, European companies are disadvantaged by imports that are created using carbon intensive power or processes. In order to address this concern, the CBAM would require importers of goods made with carbon intensive power or processes to pay a carbon tax or duty. Although the proposal is not yet law in the EU, other jurisdictions are considering similar measures.

The European Green Deal<sup>26</sup> targets for Greenhouse Gas (GHG) Mitigation Mechanism:

- 2030: 55% reduction in Greenhouse Gas Mitigation Mechanism GHG on 1991 levels
- 2050: Net neutral.

Thailand needs to be aware of the CBAM and similar policies in other jurisdictions and plan accordingly. Continuing to rely on carbon intensive fuels to generate electricity could put Thai industries at a competitive

<sup>25</sup> European Commission, *Carbon Border Adjustment Mechanism: Questions and Answers*, 14 July 2021 ([https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_21\\_3661](https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_3661)).

<sup>26</sup> [https://ec.europa.eu/clima/eu-action/european-green-deal\\_en](https://ec.europa.eu/clima/eu-action/european-green-deal_en)

disadvantage if the CBAM and similar policies are implemented.

### (4) Transborder ASEAN Issues

The ASEAN Agreement on Transboundary Haze Pollution (AATHP) 2002 has been ratified by all ASEAN member states (Thailand 2003, Indonesia 2014). There are issues about clean air which are impacted by energy production.

For a general view of Sustainability including environmental issues and clean air, please see the CSI Chapter.

## D. Areas for Further Development

### (1) Supporting energy transition

The global energy sector will experience an energy transition over the coming 20 – 30 years. The forces accelerating the energy transition are global in nature, meaning no single country can unilaterally set its own energy policies in a vacuum. The deployment of new technologies, trends against investing in fossil fuels (including upstream oil & gas production), and policy measures abroad aimed at reducing carbon emissions such as the CBAM are all factors that are outside the control of domestic policy makers.

With the above in mind, it would be counterproductive to cling to a “business as usual” scenario for the energy sector. Lawmakers must anticipate trends and align policies to achieve their objectives.

The energy transition creates an enormous potential opportunity for Thailand. Given the country's existing deployment of renewable energy and its ability to increase this share, Thailand has the chance to be a regional leader in accelerating the green energy transition. Some initiatives will require governmental fiscal support, which is obviously complex and requires a complete understanding of public finances which is beyond the scope of this position paper. However, many policies present minimal costs to the treasury but could have an outsized impact on reducing carbon emissions.

## (2) Increasing solar deployment

The current PDP envisions solar capacity to increase from just under 4 GW at present to 10 GW by 2037. While the target for increased deployment is welcome, there is room for greater ambition given Thailand's abundant solar resources. From the additional 6 GW of installed capacity, 2.725 GW will come from floating solar projects on hydroelectric dams owned and operated by EGAT. The remaining 3 – 4 GW will presumably come from a combination of rooftop and ground-mounted installations. As outlined above, Thailand will be adding more than 56 GW of new generating capacity by 2037; if solar power will only account for a little more than 6 GW of that new capacity, that amounts to slightly more than 10%. It is difficult to imagine Thailand being able to meet its NDCs with such minimal penetration of solar power.

More importantly, solar is cheaper than many alternative sources of electricity. Current rates charged by the MEA for household and business use range from THB 2.3 – 5.7 per kWh, depending on the time of day the electricity is

consumed. By contrast, rooftop solar for self-consumption typically results in energy charges of THB 1 – 1.8 per kWh over a lifespan of 25 years, depending on the equipment in use.<sup>27</sup> Put simply, solar energy is already price competitive with traditional sources of fuel for electricity generation. It is therefore unclear why the Thai government is not prioritizing greater deployment of solar energy.

Solar energy does have a few drawbacks, including intermittency and land use. On intermittency, new storage technologies are available at affordable costs that can ensure a continuous flow of electricity (see below). As for land use, appropriately tailored policies to promote rooftop solar should be devised to improve penetration in the residential market and commercial properties in city centres.

Further, floating solar projects have begun to make inroads in inland waters, particularly artificial ponds on industrial estates. Offshore solar is a nascent technology, though it shows a great deal of promise since it avoids concerns relating to land use. Unlike offshore wind, offshore solar installations are invisible or barely visible on the horizon, thus minimizing any potential negative impact of sight pollution.

New technologies with an ultralight and flexible solar panel which, among other things, is intended for bitumen and plastic membrane as a base, will permit the end product becoming a discreet solar roof. These solutions are developed for larger roof areas on commercial

<sup>27</sup> Solaris Green Energy Company Limited ([https://solaris.co.th/solar-wiki/#:~:text=Depending%20on%20size%20and%20system,of%20system%20\(25%20Years\)%20.](https://solaris.co.th/solar-wiki/#:~:text=Depending%20on%20size%20and%20system,of%20system%20(25%20Years)%20.)).



properties, industrial buildings, warehouses and sports arenas, as well as apartment buildings and private homes. They produce 90% lower CO<sub>2</sub> emissions compared to traditional solar panels; only 17.5 kg CO<sub>2</sub> per m<sup>2</sup> installed solar panel against over 200 Kg for traditional PV (photovoltaic) panels. Flexible solar panels allow installation on curved surfaces and roofs while offering superior shading performance. The bypass (connectivity) technology between each cell ensures that shading on one or more solar cells only affects that cell instead of the entire panel. Highly efficient CIGS (copper indium gallium diselenide) thin-film photovoltaic panels, without toxic cadmium are superior in several respects to customary PV cells.

### (3) Carbon Capture, Utilization and Storage (“CCUS”)

Carbon capture, utilization and storage will be needed globally in order to reach global net zero carbon emissions. Although direct air capture (“DAC”) has gained attention within the past year due to reports of initial projects coming online, DAC technology is still a relatively expensive method of removing carbon from the atmosphere, given the low concentrations of CO<sub>2</sub> in ambient conditions.

An alternative technology that is being developed under the CCUS banner is bioenergy with carbon capture and storage, or “BECCS”. This involves the generation of electricity from biomass or biogas, alongside the capture of carbon dioxide emissions at the source, where concentrations of CO<sub>2</sub> are significantly higher than ambient atmospheric conditions. In theory, if 100% of the

CO<sub>2</sub> is captured and permanently stored, BECCS would be a carbon negative technology. In other words, not only does BECCS not contribute to adding new carbon emissions, but since the fuel sources are derived from plant material that has absorbed CO<sub>2</sub> from the atmosphere, the net result is the removal of carbon from the atmosphere.

BECCS is promising, but only viable with the proper governmental incentives. A key policy tool to encourage development of BECCS would be instituting a carbon pricing mechanism to encourage power producers to install BECCS technology. An alternative policy tool could be utilizing tax incentives through the Board of Investment (“BOI”) to encourage utilization of BECCS. For example, if a “normal” biomass project qualifies for an eight-year CIT exemption when it does not utilize BECCS, increasing the CIT holiday to thirteen years without a cap may entice developers to install the necessary technology. Carbon accounting standards would also need to be devised to ensure carbon is being properly removed. The BOI has announced that it will be providing additional tax incentives to projects that utilize CCUS technologies; this is a welcome development that will hopefully result in greater deployment of these technologies.

### (4) Green hydrogen production

At the UN Climate Conference in Glasgow, COP26 in 2021, green hydrogen was part of a number of pledges. It can be a means to decarbonize heavy industry, long haul freight, shipping, and aviation. Hydrogen can be an important pillar of a net zero economy.

The European Commission has adopted legislative proposals to decarbonize the EU gas market by facilitating the uptake of renewable and low carbon gases, including hydrogen.<sup>28</sup>

One company, with a base in Thailand, explains, in a neutral way, the role of hydrogen:

“We believe that hydrogen will play a central role for the design of modern energy systems to allow for complete green energy independence and security. A burgeoning global industry is taking shape around hydrogen’s potential as a storable fuel or energy carrier. The many advantages it has over battery-electric technology result in hydrogen gaining traction with industry, environmentalists and leading governments. With an abundance of variable renewable energy resources coming on-line, green hydrogen is the solution to power the green energy system of the future”<sup>29</sup>

The vast majority, around 99%, of hydrogen used globally is still produced from fossil fuels. Most of that is done by steam methane reforming of natural gas, a process which emits large amounts of greenhouse gases. We speak about green hydrogen when renewable energy sources are used in an electrolyser to make hydrogen from water. Hydrogen is the bridge between renewable power generation and other types of energy vectors and allows us to clean up more than just the electricity sector with fossil-free fuels.

<sup>28</sup> See fn 13

<sup>29</sup> [https://handbook.enapter.com/knowledge\\_base/aem\\_technology.html#aem-technology](https://handbook.enapter.com/knowledge_base/aem_technology.html#aem-technology)

Given Thailand’s abundant solar radiation, relatively inexpensive land, ample coastlines and proximity to major markets, it is well-situated to be a leader in the deployment of green hydrogen. Green hydrogen presents a tremendous opportunity for Thailand. The technology involves splitting water molecules into their component parts of oxygen and hydrogen through electrolysis. If the electricity is generated from non-carbon emitting sources of energy, such as solar, wind or hydroelectricity, it is generally classified as “green” hydrogen.

Thailand has abundant potential for additional deployment of solar photovoltaics. However, over-reliance on solar energy to power the electricity grid is impractical given the intermittent nature of the solar radiation. One option to overcome this limitation is energy storage technology (see below). The generation of green hydrogen is similar to energy storage, since the gas can be combusted to generate electricity in the future. Green hydrogen has additional applications, such as being a feedstock for chemical manufacturing (such as ammonia), as well as acting as a fuel for methods of transport that are harder to electrify due to weight constraints of batteries, such as long-haul shipping, trucks and buses, and potentially aircraft.

Thailand’s emissions reduction strategy involves a transition from coal and lignite to natural gas. Since natural gas emits less carbon dioxide than coal, it is often seen as a “bridge” fuel in the energy transition. One downside to deploying natural gas, however, is the upfront infrastructure costs lock in policy choices for decades to come and may, on their surface, make future transitioning more difficult. The good news is that green hydrogen can act as another “bridge”, since it can generally be

combusted alongside or as a substitute to natural gas in existing power plants (though some retrofitting is likely inevitable). Thus, the reliance on natural gas in the near term (5–10 years) does not necessarily entail guaranteed future carbon emissions, provided Thailand can develop a green hydrogen industry.

At the moment, there is little to no regulatory framework surrounding hydrogen production, transportation and combustion. As a preliminary point, the Thai government should enact clear guidelines to provide investors certainty with how the market will be regulated. Hydrogen could be regulated under the FOCA and the FOTA by the DOEB, or it could be regulated under the Energy Industry Act by the ERC. Further, BOI incentives would encourage development of generation and transportation of green hydrogen. BOI incentives should also be allocated to the manufacturing of key technology, such as electrolyzers, to ensure a ready supply for ramping up production. The introduction of carbon pricing would encourage power producers to blend green hydrogen with natural gas to minimize their tax liabilities; as with CCUS, this will necessitate the development of carbon accounting standards.

## (5) EVs and EV infrastructure

The Thai government has announced ambitious goals relating to the deployment of electric vehicles (“EVs”). The government is aiming for 50% of all new car sales to be EVs by 2030, and 40% of all new two-wheeled vehicles to be powered by electricity.<sup>30</sup>

<sup>30</sup> “EV, Smart Electronics and LTR Deep Dive for JFCCT”, Prime Minister’s Office, 10 November 2021.

While this is welcome, widespread EV use will only have a positive influence in reducing CO2 emissions if the electricity grid is decarbonized. Currently, nearly 80% of Thailand’s electricity is generated by burning fossil fuels. The increase in demand for electricity that will arise due to widespread use of EVs should be met with renewable energy sources in order to make a meaningful contribution to reducing greenhouse gas emissions.

EV infrastructure will require government support. Many owners and users of EVs will be able to charge their vehicles at their homes or places of work. Fueling stations for vehicles with internal combustion engines do not need to be replicated in order to satisfy recharging needs, though there will need to be some recharging capacity for long-haul trips. Given their position as the primary distributors of electricity throughout the country, the MEA and PEA could take the lead in rolling out charging infrastructure. Alternatively, a licensing regime could be established to permit private parties the ability to develop the necessary charging infrastructure.

More information can be found in the Automotive Chapter.

## (6) Alternative storage

So far, there has been limited deployment of grid-scale energy storage in Thailand, though there are several projects in the pipeline. The primary technology being considered is typically lithium-ion batteries, which have proven effective in facilitating the deployment of EVs due to their high energy density. However, the lifespan of lithium-ion batteries is typically limited to 7–10 years, meaning there will need to be ongoing decommissioning.

Further, the primary minerals that comprise a lithium-ion battery are lithium, cobalt and nickel, which are not abundantly or readily available, raising concerns of securing the necessary supply chains.

Fortunately, alternative storage technologies are already available and ready to be deployed. Energy Vault, a company that recently listed on the New York Stock Exchange, constructs towers of bricks which are raised and lowered by cranes, thus utilizing gravity as a storage of potential energy; Energy Vault's technology is conceptually similar to pumped storage hydroelectricity. Another alternative is the iron-air battery storage being developed by Form Energy, another US-based company. Form Energy's technology is reportedly cheaper than lithium-ion batteries and utilizes iron as its core mineral component, which is widely available and less expensive to mine and process than lithium, cobalt and nickel.

In short, there are numerous start-ups working on storage technology that will enable greater deployment of renewable energy by solving the intermittency problem inherent in solar and wind power. The PDP should plan for greater use of energy storage coupled with solar to realize a speedier transition from fossil fuels.

## **(7) Unlocking rooftop solar in the residential sector**

In 2019, the government introduced a pilot scheme that would allow up to 100 MW per year of installed residential rooftop solar capacity to sell excess electricity generated to the grid. This net metering scheme was a welcome development, but interest was very low amongst the

public. The MOE should learn from this experience and develop new policies that will permit greater deployment of residential rooftop solar.

First, eliminating the cap of 100 MW per year would allow private developers to better evaluate long-term growth opportunities. Second, the feed-in-tariff must be high enough to properly incentivize homeowners; ideally, the feed-in-tariff should match the purchase price per kWh of electricity that homeowners pay to the MEA or PEA. Another area to consider is financing; rooftop solar has been successful in Thailand in the commercial and industrial sectors largely because solar developers absorb construction and installation costs and realize investment returns through long-term power purchase agreements. This is less practical in the context of the residential sector, meaning homeowners need to purchase the solar equipment outright. The government should explore ways to encourage financing in this sector, such as by offering tax credits to homeowners and/or credit default insurance schemes to stimulate private finance. New types of solar panels that are lighter, thinner, with a lower carbon footprint, more flexible in shape and high aesthetic value would allow for more options in the residential market.

# Food and Beverages

## SUMMARY OF RECOMMENDATIONS

The hospitality sector creates thousands of direct and indirect jobs, builds Thailand's reputation as a vibrant place to visit and improves income distribution that enhances the prosperity of people and communities. It is a key part of Tourism and other parts of the economy. We firmly support the Royal Thai Government plan to maintain and build its leadership in the world food and beverages industry, together with transforming Thailand into the world's leading premium and safe tourism destination.

As Thailand moves towards a potentially more sustainable 'value over volume' tourism strategy, attracting high yield tourists, expatriates and Thai citizens who spend significantly on premium food and beverages will be crucial. Existing 'lower' tiers cannot be ignored however. To achieve all this, we recommend a more balanced policy approach that enhances the growth of hospitality as the engine of tourism, while balancing important environmental objectives.

Specially, we make the following recommendations:

### 1. Beverages

- 1.1 Revisit restrictive alcohol control laws such as e-commerce ban, the ban on consumption between 14.00- 17.00hrs, etc. to encourage hospitality attractiveness.
- 1.2 Consider introducing a public-private 'Hospitality Working Group' to drive long-term economic growth in the sector, with the collaboration of responsible government agencies.
- 1.3 Apply a collaborative approach to reduce alcohol-related harm through evidence-based, targeted education campaigns to reduce harms, especially, underage drinking, drink driving, binge drinking.
- 1.4 Restructure excise taxation to create a more sustainable revenue stream for the Government, while supporting hospitality and tourism.
- 1.5 Optimize import duties on imported wines and spirits products which will attract high yield tourists, help reduce incentives for illicit alcohol trade and increase overall revenue.

### 2. Food

- 2.1 To achieve the goal of Thailand's food industry, further policies and actions are urgently required for more sustainable and effective plans for economic recovery in food industry of Thailand.
- 2.2 Revise List 3 of the Foreign Business Act to allow greater foreigner participation. Cease prohibiting foreigners from carrying out certain of the 39 professions as relevant to the Food & Agricultural industry.

- 2.3 Fast Track Regulatory Reform – Allow the Product approval & registration processes process in documentation and to be less complicated / reduce red tape in the operations in food industry
- 2.4 To achieve food security, Thailand will need to comply with international standards and practices to lift up the quality and effectiveness in production of agricultural products and processed food.
- 2.5 EU-Thailand FTA – most tariffs barriers will be eliminated and minimized so as to facilitate trade and business activities to be done more easily with less unnecessary costs of production along the way from the production to the destination abroad. It will also help reduce and maintain the prices of foods and agricultural products to be more affordable and accessible for consumers. Allow for services in the sector to be provided more effectively.
- 2.6 RCEP – can solve problems of food trade and production by minimizing protectionist policies like tariffs on agricultural products which also helps reduce the cost of production in food industry, as well as setting single-standard rules of origin including certificate of origin for products from all markets.
- 2.7 European Green Deal – encourage Thai businesses and Food industry to comply with international standards, especially aspects of the European Green deal, from production to exportation to EU countries to facilitate the flow of food trade.
- 2.8 Future Food trend – enhancing and upgrading the agriculture industry to adopt new technologies and encourage new FDIs and foreign know-how to ensure the industry keeps up with global trends/ competitions and remains sustainable for the future.

## 1. Thailand Alcoholic Beverage Market

### A. Introduction

Alcoholic beverages are part of a balanced lifestyle, when consumed moderately and responsibly. EABC is committed to supporting the World Health Organization (WHO) to achieve the target of reducing harmful use of alcohol by 10% within 2025, which is one of the key milestones in the United Nations (UN) Sustainable Development Goals (SDGs). We also honour the Royal Thai Government's genuine effort to promote the public health agenda, as

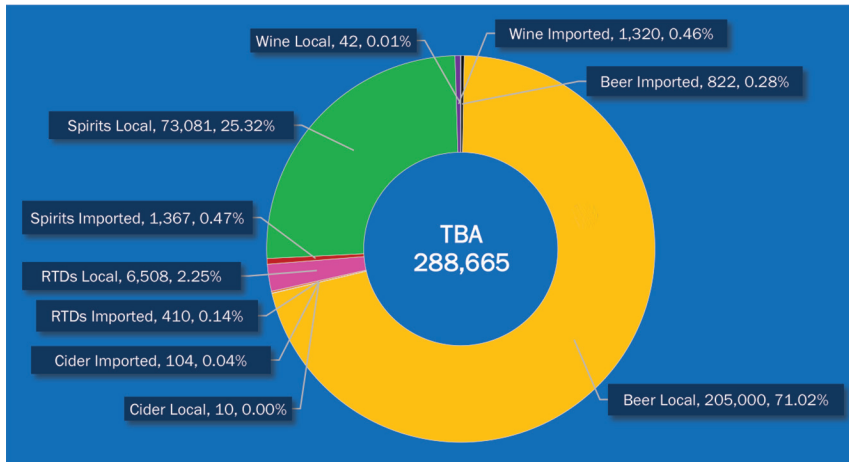
well as to address harmful use of alcohol, in particular, underage drinking, binge drinking and drink driving. Partnership with stakeholders including government, civil society, individuals, non-profit organizations and the alcohol industry players is the key to our approach in delivering impactful programs that effectively tackle harmful drinking.

## B. Thailand Alcoholic Beverage Industry

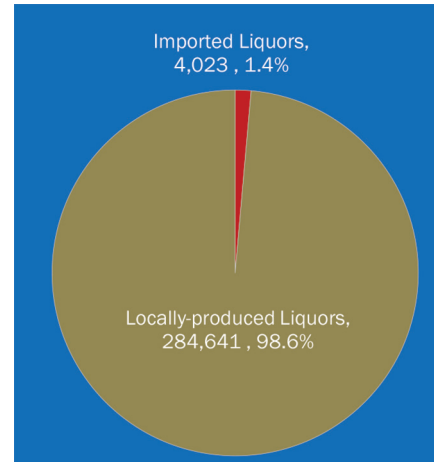
For decades, the Thailand alcoholic beverage industry has been dominated by locally produced liquors and beer. In 2020, according to the International Wine and Spirits Research (IWSR), Thailand Total Beverage Alcohol (TBA) volume was reported at 288,665,000 cases of nine-liter led by locally-produced beer of 205,000,000 cases of

nine-liter (71.02%), followed by locally-produced spirits of 73,081,000 cases of nine-liter (25.32%) and locally-produced RTDs or Ready To Drinks at 6,508,000 cases of nine-liter (2.25%) respectively. Imported alcoholic beverages (spirits, beer, wines and cider) were only 1.4% of the Thailand TBA or 4,023,000 cases of nine-liter. Please refer to Picture 1 and Picture 2.

**Picture 1: Thailand Total Beverage Alcohol Volume in 2020 Classified by Category and by origin (thousand cases of nine-liter)**



**Picture 2: Thailand Total Beverage Alcohol Volume in 2020 by Origins**



Source: The International Wine and Spirits Research (IWSR)

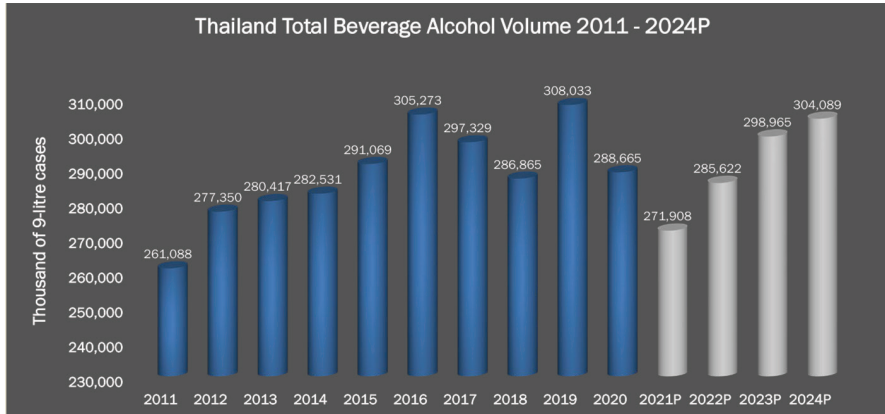
The COVID-19 pandemic which has hit Thailand since January 2020 has severely impacted the alcoholic beverage industry. The absence of international and local tourists due to travel restrictions measures, the shut-down of bars, nightclubs, and restaurants and the occasional ban on sales of alcohol are the causes. A turnaround is optimistically anticipated by 2024 – a while after major of the Thailand and world population have fully vaccinated and herd immunity is created which is a critical factor that

can recall the confidence of foreign tourists to return and for local communities and businesses to be ready to resume their activities in the next normal way to further drive the recovery of tourism and hospitality industry as well as resilient economy of Thailand.

Similar to the tourism industry, Thailand TBA (Total Beverage Alcohol) volume is projected to gradually return to the pre-COVID level in 2024 when tourism and

hospitality industry is anticipated to fully recover. In 2024, TBA volume is projected at 304,089,000 cases of nine-litre comparing to 308,033,000 cases of nine-litre in 2019. Please refer to Picture 3.

**Picture 3: Thailand Total Beverage Alcohol (TBA) Volume 2011 – 2020 and Projected Volume 2021 - 2024 (Thousands of nine-litre cases)**

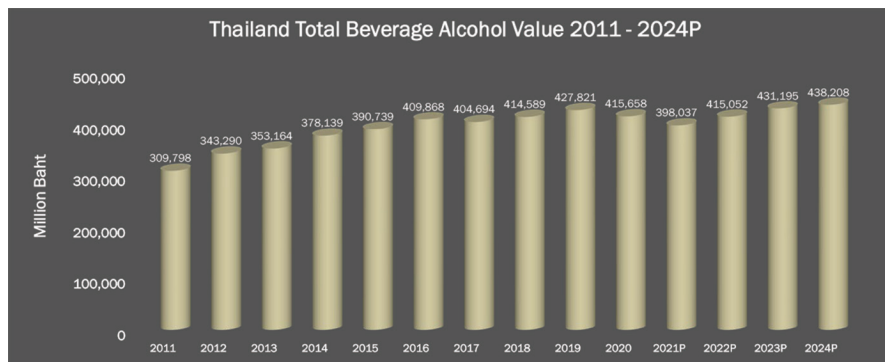


*The absence of tourists and the country's COVID-19 preventive measures that targeted on-premises outlets and alcoholic beverages resulted in sharp drop of Thailand TBA by 6.3% in 2020 as 288,664,600 cases of nine-liter were reported comparing to 308,033,000 cases of nine-liter in 2019*

Source: *The International Wine and Spirits Research (IWSR)*

Value of the Thailand alcoholic beverage business in 2020 declined by 12,184 billion baht (2.84%) or to 415,658 million baht from 427,821 million baht in 2019 having cider, wine, Ready to drink and beer as the most impacted categories respectively. However, value of spirits slightly increased by 1.54% or 2.9 billion baht due to the fact that spirits' channel of trade is less dependent on the on-premises, while there is a shift in consumer preference and behaviors (drinking at home). Please refer to Picture 4 and Table 1.

**Picture 4: Value of Thailand Beverage Alcohol 2011 – 202**



Source: *The International Wine and Spirits Research (IWSR)*. Reference foreign exchange rate USD1.00 : THB31.33

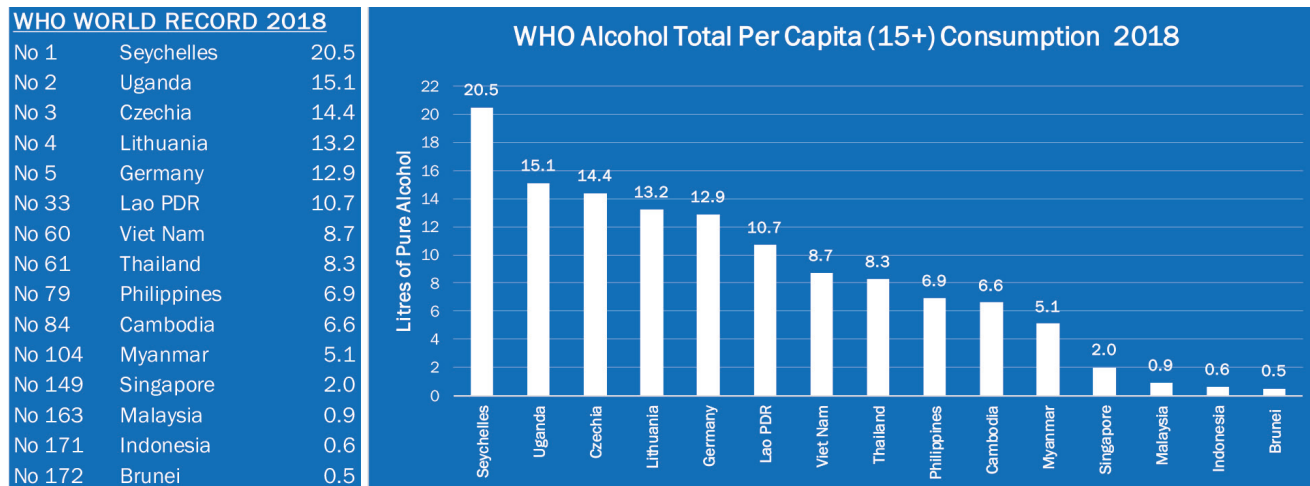


**Table 1: Value of Thailand TBA by Category : 2019 – 2020 (million baht)**

	2019	2020	2020:2019
Beer	215,940	205,533	-4.82%
Cider	520	200	-61.56%
RTDs	8,795	7,665	-12.84%
Spirits	188,129	191,029	1.54%
Wines	14,438	11,231	-22.21%
<b>TBA Value</b>	<b>427,821</b>	<b>415,658</b>	<b>-2.84%</b>

The country alcohol consumption per capita, per the latest report of World Health Organization (WHO) in 2018, is ranked the world's number 61 and ASEAN's number 3 after Lao PDR and Vietnam for alcohol total per capita consumption (15 years and older) – at an average of 8.3 liters of pure alcohol per person (15 years and above). Please refer to Picture 5.

**Picture 5: Thailand Alcohol Total Per Capita (15+) Consumption (litres of pure alcohol)**



Source: The Global Health Observatory Data Repository of World Health Organization (WHO)

### C. Role of Alcohol Industry to Support Thailand Recovery in the Next Normal

Alcoholic beverage consumption has been part of human culture and tradition for centuries. During pre COVID-19 pandemic period, the global alcohol industry as well as its downstream and upstream industries such as agricultural, tourism and hospitality, packaging materials,

etc. have contributed significant amount of revenues, taxes and employment to the counties' economies. In France, Italy, USA, Scotland, Korea, Japan and Mexico, the focused growth on the sector has driven economic opportunity at micro and macro level, high value exported

goods, and the production sites have become destinations of choice of global tourists.

While the global pandemic is improving and most countries around the world are relaxing their regulations and/or reopening their borders again, the alcohol industry has high potential to add more value to economy within the public health context to generate sufficient revenue to sustain the recovery of the economy, improve public welfare, enhance quality of life and wealth of individual and communities.

#### **D. Alcoholic Beverages: Tourism and Hospitality**

Tourism and hospitality sector have been a key growth driver for Thailand economy in the past decade. In 2019, the year before the COVID-19 pandemic, the tourism industry generated revenue in total of 3.1 trillion, 1.93 trillion baht from inbound tourism and 1.1 trillion baht from local tourists, accounted for 17 percent of the country's GDP from the vast number of foreign tourists of 39.79 million who had averagely spent around 5,100 baht per person per day. Therefore, it is undeniable that the long period of global lockdown and travel restrictions has severely affected the Thai tourism and the economy.

Alcoholic beverages and night entertainments are among the top spending items of international tourists, especially premium and high-end groups, either through personal trips or MICE (Meetings, incentives, conferencing, and exhibitions). Expatriates and Thai citizens contribute significant revenue to the country, while generating thousands of jobs. According to the Tourism Authority of Thailand 2019 report, tourists had spent up to 120 billion baht on beverage alcohol drinks while spending 62 billion

baht (or 1,600 baht per person per day) on night entertainment activities, in which alcoholic beverage play a key role.

As the country reopens with a concrete tourism roadmap to welcome fully vaccinated visitors, it is crucial that Thailand maintains and advances its competitiveness above the regional neighboring countries. Principally, this can be through building its reputation as the world's leading premium and safe hospitality destination, including the highest standard of hospitality services, entertainment activities, and food and beverage quality.

#### **Recommendation:**

##### ***1. Revisit restrictive alcohol beverage control laws to encourage hospitality growth***

To advance Thailand's tourism competitive advantage and be the destination of choice of premium tourists, the Government, through collaboration among the relevant stakeholders such as Ministry of Tourism and Sports, Ministry of Public Health, Excise Department (Ministry of Finance) and by consultation with the private sector, should revisit the alcohol control laws and alcohol taxation. This includes but not limited to the ban of alcohol sales daily during 14.00 - 17.00hrs, the alcohol labeling regulations, zoning and ecommerce alcohol selling ban.

##### ***2. Introduce public – private 'Hospitality Working Group' including responsible government agencies***

The most successful night-time economy and hospitality cities in the world such as Paris, Rome, Amsterdam, Lisbon, Barcelona, Munich, London, New York, Singapore, Sydney, Toyko, Seoul, etc. have

developed clear, long-term frameworks that seek to balance important public health considerations with growing the hospitality sector. We recommend the Government include a hospitality-specific taskforce within relevant Government agencies to make recommendations and introduce measures to support the growth of the sector over the next 5 years. For example, after a two-year review process, the New South Wales Government introduced a 'Night-Time Economy Commissioner' with cross-departmental responsibility, a hospitality advisory committee and a '24-hour economy roadmap' to better position Sydney as a global leader. Further details can be located from <https://www.create.nsw.gov.au/about-us/our-work/nsw-night-time-economy/>

## E. Market Access and Proposed Resolutions

### (1) Taxation

#### (a) Excise Tax on Alcohol

In Thailand, excise tax is an indirect tax collected from specific products and services that may create negative externalities to individuals and society. The five-year excise tax collection strategy plan for the fiscal year 2021 – 2025 aims at driving sustainable revenue and growth of economy, society, environment and energy, enhancing effectiveness of revenue tax collection for fiscal stability and promoting innovation and the country competitiveness through the transformation of excise operational system and provision of remedies and support recovery of industries affected by COVID-19 pandemic such as agricultural sector and tourism and hospitality sector.

Excise tax on beverage alcohol has adopted a hybrid system that is complicated and discriminatory whereby ad valorem tax and specific tax are imposed topped up by earmarked taxes. The fact that excise tax levies heavily on ad valorem or on suggested retail price (SRP), instead of tax revenue increase, the current excise system results in deterioration of the beverage alcohol market and two valid issues that are illicit alcohol activities and loss in government revenue. Please refer to Table 2.

**Table 2: Excise tax rates on alcohol**

Liquor Category	Ad Valorem Rate (Upon SRP excluded VAT)	Specific Rate (THB per LPA)
<b>1 FERMENTED LIQUOR</b>		
1.1 Beer	22%	430
1.2 Wine & sparkling wine, made from grape		
1.2.1 SRP Excl VAT ≤1,000 baht	0%	1,500
1.2.2 SRP Excl VAT >1,000 baht	10%	1,500
1.3 Fruite wine with ingredient of grape or grape wine		
1.3.1 Alcohol ≤ 7% / size ≤ 0.33L	10%	150
1.3.2 Others: SRP Excl VAT ≤ 1,000 baht	0%	900
1.3.3 Others: SRP Excl VAT > 1,000 baht	10%	900
1.4 Others: apart from 1.1, 1.2 and 1.3	10%	150
<b>2 DISTILLED LIQUOR</b>		
2.1 Local white liquor "Lao Khao"	2%	155
2.2 Others: apart from 2.1	20%	255
2.3 Sura Sam Thub		
2.3.1 For industrial, medical, pharmaceutical and scientific	0%	0
2.3.2 For making denatured ethanol	0%	0
2.3.3 Others: apart from 2.3.1 and 2.3.2	0%	6

*Remarks: SRP refers to Suggested Retail Price and LPA refers to Litre or Pure Alcohol*

*At present, earmarked taxes of 17.5% have been imposed on excise taxes collected from alcohol to contribute to the local government and social funds, including 10% municipal tax, and contributions of 2% to the Thai Health Promotion Foundation Fund, 1.5% to the Thai Public Broadcasting Service Fund (TPBS), 2% to the National Sport Development Fund and 2% to the Elderly Person Fund.*

EABC believes that specific taxation, which is levied on alcohol quantity, optimally taxed is an effective tool to address the above issues since it enables reducing incentives from illicit activities by narrowing price gap between legitimate alcohol and illicit alcohol, thus, preventing government from tax revenue loss.

We welcome and support the Excise Tax Act 2017 and the five-year excise tax collection strategy plan for the fiscal year 2021 – 2025 believing that it would bring improvements in various areas, especially, transparency, fairness, ease of doing business and promote responsible consumption of alcohol while stimulate economic recovery and resilient Thailand.

However, we are concerned that, a proportion of specific to ad valorem alcohol taxation has not inconsiderable changed since the excise reform in September 2017, therefore, we would humbly request the government to reaffirm that the alcohol excise rate and structure will truly bring a fair competition between locally-produced liquors and imported liquors, address the harmful use of alcohol while support recovery of tourism and hospitality industry.

**Recommendation:**

***Move to specific excise tax at optimal tax rates.***

Specific taxation is recognized internationally as the best practice for taxing beverage alcohol. The approach brings advantages not only to the government's revenue collection objective and public health objective but also to the businesses, consumers and communities that include predictable excise

revenue, lessening leakage, improving fairness and addressing harmful use of alcohol since producers are indirectly encouraged to produce products with lower alcohol content or offer better-quality products. We, therefore, commends the Government to consider an alcohol excise taxation structure that focuses on specific tax, at the optimal rates for all categories, which enhances the integrity of the excise system, transparency, fairness, be predictable and easy to administer.

**(b) Import duties**

Currently, imported alcoholic beverages account for 1.4% of the Thailand total alcoholic beverage market. Key factor that obstructs the growth of imported alcohol business is significant high and unreachable price point for the wide consumers group caused by taxes. The Most Favored Nation or MFN tariff rate of 60% on imported alcoholic beverages, which is amongst the highest in ASEAN economies, results in large prices discrepancies among Thailand's legitimate market, its neighboring countries and illicit market. This inadvertently allows high incentives for illicit alcohol production and trade, both smuggling and counterfeit.

Premium imported alcoholic beverages can play an important role in attracting not only foreign tourists, but expatriates and Thai residents who have high purchasing power to choose Thailand as their destination. It will also lead to increased spending on hospitality and entertainment, accelerating revenue to support the recovery of the tourism and hospitality sectors.

In 2021 the cabinet approved an investment promotion package to attract one million wealthy global citizens and high-skilled foreign professionals under the ‘Long Term Residents’ (LTR) scheme. One feature is the proposed reduction of import duties of wines and spirits by half (or by 50 percent) for five years, from 2022 to 2026. We recommend that such incentive scheme be applied to both qualified investors and the current registered importers. The reduction of import duties of wines and spirits would allow the Government to achieve following areas that are:

- i) Stimulate prestige tourism and the hospitality sector: For the group of high-spending tourists nations such as the Nordic countries, Switzerland, UK, UAE, Russia, Israel, Australia, and USA as well as expatriates and Thai residents, quality of the food and beverages is one of the key factors for them to make a decision on holiday destination. The reduction of import duties will allow prices of imported wines and spirits to be more competitive while enhancing sales and activities at restaurants and bars. This also paves the way for Thailand to be the world’s destination of the holistic food and beverages experience, from street food to prestige, which will be a core component in improving the overall local economy, employment, and income distribution.
- ii) Address illicit alcohol trade: The MFN tariff rate of 60% on alcoholic beverages topped up by other taxes inadvertently drives illicit alcohol activities leading to risk of consumer’ health and government revenue loss. The reduction of import duties of wines and spirits would help reducing incentives to illicit traders while lifting

demand for legitimate goods and improving taxes collection that can substitute reduction of import duties effect. Please find further details on impacts of illicit alcohol trade in Section 2.3.

- iii) Increase government revenue: The industry’s taxation modelling indicates that increasing in sales of legitimate products will substitute and offset import tariff loss leading to aggregate revenue increase during the year 2022 – 2027 as detailed below.
  - 1) In 5 years, from 2022 to 2027, the Thai Government could gain an additional 1 billion baht in cumulative revenue from imported spirits.
  - 2) While import tariff receipts fall by circa 600 million baht in the first year of full implementation (year 2022), volumes of imported spirits increase, leading to raising in excise receipts 800 million baht, allowing a net 200 million baht increase in taxes receipts.
  - 3) For imported wines, there is a similar positive trend which returns volumes to nearly 2 million cases of nine-liter at the end of 2022, with a net benefit to excise receipts despite the fall in import tariffs

In contradiction, if the reduction of import duties of wines and spirits were only applied to the group of qualified foreign investors, it would worsen the illicit alcohol situation by indirectly encouraging the grey market which will result in greater government revenue loss, constitute a complicated importation system and excise operational system as well as create an unfair treatment to the local consumers and legitimate food and beverages operators.

**Recommendation:**

***Reduce import tariffs on imported spirits and wines by half, as per the Long-Term Residence (LTR) scheme proposal but applied to all not sure LTRs.***

Alcoholic beverages industry has a potential role to play in adding value to the county economy and driving resilient Thailand through the recovery of tourism and hospitality industry within public health context, like in other countries whose beverage alcohol products become world' heritages such as France (champagne and cognac), Italy (wines), Australia (wines, spirits, beer), New Zealand (wines), US (bourbon), Scotland (whisky), Korea (soju) and Japan (sake).

The reduction of import duties will allow reasonable price of imported wines and spirits which attracts tourists and local consumers with high spending power enhancing sales and activities at prestige restaurants and bars, addressing illicit alcohol trade. It also supports the ambition of Thailand to be the world's destination of the great tourism experiences and the country with sustain economy.

## **F. Non-tariff Barriers to Trade versus Balanced Alcohol Control Policy**

### **(1) Alcohol Control Policy**

Since the enactment of the Alcoholic Beverage Control Act B.E. 2551 (2008), the main law that has governed consumption, sales, marketing and promotional activities of alcoholic beverages, a series of alcohol control measure

have been introduced which constitute barriers to trade, create an unfavorable investment climate and are obstacles to individual and legitimate businesses.

While the country and the globe are transforming into the next normal and Thailand has set its objective to be the world's leading premium and safe tourist destination, we would propose the government to consider "the balanced alcohol control policy" as one of the tools to gear Thailand forward.

Thailand has implemented strict alcohol control regulations, most of which contain unclear or impractical provisions and without evidence proving that they are able to effectively address harmful use of alcohol, especially, binge drinking, drinking and driving and underage drinking. Examples:

- The ban of alcohol sales daily during 14.00 - 17.00hrs
- The alcohol labelling regulations
- Zoning

E-commerce alcohol selling ban those regulations do not support immediate need of the country to drive resilient economy and grow revenue, contradict to the overall economic development blueprint as well as establish unnecessary operational difficulties for legitimate business operators and bring about complications to tourism and hospitality industry. Therefore, revisiting the alcohol control laws to ensure the balance between public health objectives and overall benefits of the country economy, especially the recovery of tourism hospitality and employments of thousands in the industry is required.

## (2) Alcohol E-commerce

Ecommerce and the cashless society have rapidly grown during the COVID-19 pandemic as part of consumer's transition towards the new normal lifestyle. We recognize and wish to support the Government's Digital Economy and 4.0 strategies to transform Thailand to be a leading digital hub in South East Asia. Though Thailand e-commerce has moved in the growth path at around 25% - 30% annually having electronics appliances, groceries, household items, food and beverages the top categories traded on ecommerce reflecting the changes of consumer behaviors and penetration of the digital and social media, there remains potential growth opportunities for the Thailand ecommerce and we would commend some solution for consideration.

### (a) The balanced alcohol ecommerce control measure

The enactment of the Notification of the Office of The Prime Minister RE: Prohibition on Sales of Alcoholic Beverages Through Electronic Practices or Manners B.E. 2563 (2020) prohibits sale and communication of alcoholic beverages directly to consumers (B2C) through any electronic methodologies such as social media, webpage, ecommerce, etc. in December 2020.

The policy intent is to prevent young people from ease of access to alcoholic beverage and to reduce alcohol related harm; however, the regulation is inconsistent with the government digital economy ambition as well as COVID-19 preventive measures. It also overlooks consumer preferences to purchase products through an online channel (like with other forms of shopping), dilutes business confidence and severely affect legitimate online

retailers, especially, SME craft beers and wine businesses who relied heavily on the online market. A responsible and sustainable approach going forward should enable effective regulation of alcohol ecommerce and address concerns regarding underage drinking.

For example, the imported alcohol industry and allied businesses have developed a Code of Conduct Sales of Alcoholic Beverages Through Electronic Methods, which aims to self-regulate the allied ecommerce businesses and to support the government public health objectives to reduce harmful use of alcohol. The Code of Conduct offers best practice of responsible alcohol ecommerce that allows the relevant government agency to track and trace the activities from order receipt until proof of delivery. It would also ensure compatibility with date and time restrictions, verify age of purchaser at sales and delivery point, include a process to refuse sale and delivery to underage and intoxicated persons or have the product delivered to the premises where are prohibited by laws. The industry's Code of Conduct has been successfully implemented in several countries such as Australia, UK, The Philippines and Indonesia as a mean to ensure responsible alcohol trade through electronic channel.

#### **Recommendation:**

#### ***Replace ban on e-commerce sales with regulated Code of Conduct***

Instead of the absolute ban of electronic alcohol sales and communication to consumers, we would recommend the government to consider the industry's Code of Conduct on Sales of Alcoholic Beverages Through Electronic Methods. This offers

an alternative and balanced solution that effectively drives public health objectives, while supporting small business, consumer preferences, digital economy growth and social distancing.

We are committed to working with the Government in meaningful consultation to encourage effective and reasonable measures that ensure compliance with relevant laws, a commitment to reduce harmful consumption, and to support the country digital economy and society development plan.

## (b) Labeling and Pictorial Graphic Health Warning

- i) Alcohol labelling regulation Notification of the Alcoholic Beverage Control Committee Re: Rules, Procedure and Condition for Labels of Alcoholic Beverages B.E. 2558 (2015) or the Labelling Regulation was enacted in October 2015 despite the concerns raised by members of World Trade Organizations (WTO) and private sector, for the strict but unclear and impractical requirements of the regulation which may cause barriers to trade, burdens to business and restricting the consumers rights to access information of products.

The Labelling Regulation contains vague restrictions with the lack of clear guideline relating to the messages permitted or prohibited on the alcoholic beverage label and its packaging leading to inconsistent interpretations. The fact that the regulation prohibits the use of cartoon images, quality or properties claim statements or terms recognized worldwide such as ‘premium’, ‘reserve’,

‘deluxe’ and ‘X.O.’, etc. regardless of whether they are true and factual supported by evidence, trademarks, geographical indications or international practices, it may infringes intellectual property rights and impose unduly trade restrictive terms for goods imported into the Kingdom, which is arguably inconsistent with international trade obligations.

The revision of technical guidelines released in April 2017 has not brought any clarity but leading to discretion conferred on individual officers, on a case-by-case basis. The stakeholder’s consultation sessions on the Labelling Regulation had been held twice on 31 October 2017 and 5 June 2018 for the groups of government sector, private sector and civil society to whom were selectively invited by the organized body, the National Health Commission Office. It is not surprised that the report on the stakeholder’s consultancy clearly states that all parties unanimously agree that the Labelling Regulation contains unclear provisions and shall be amended.

Though we welcome and honour the public consultation process, we concern that there is no tangible action taken afterward – neither to mend the Labelling Regulations nor its technical guidelines.

### **Recommendation:**

***Alcohol beverage labelling laws should conform to WTO rules, be practical and balanced.***

The fact that alcoholic beverage is food commodity consumed and traded globally, the Royal Thai Government shall revisit and consider improving the Labelling Regulation by taking in to account the comments made at The World Trade Organization



(WTO) Technical Barriers to Trade (TBT) Committee meetings as well as the report on stakeholders consultation on the Labelling Regulation dated in 2018 to ensure the provisions of the law will be clear and practical conforming to the World Trade Organization obligations and international practices and will not constitute barriers to trade.

Furthermore, it is important that favorable trade and investment environment is appropriately created while ease of doing business and the balanced policy philosophy are honored to allow the transformation of Thailand to the sustainable economy in next normal period.

### (c) Pictorial Graphic Health Warning Label

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 or the draft GHWL law was introduced in 2009 claiming that it would reduce alcohol consumption among children and address harmful use of alcohol in the absence of any credible scientific evidence. The requirements of the draft GHWL law seek to impose tobacco-style pictorial health warning graphics that cover substantial area of the label or packaging materials of alcoholic beverage product.

As a food product, alcoholic beverage has been regulated under Food Act B.E. 2522 (1979) and Excise Tax Act B.E. 2560 (2017), there is not feasible to introduce tobacco-

style pictorial warnings to the product by ignoring the existing governing laws and the fundamental differences between the two product categories which demand separated control measures. Please see Picture 6.

An introduction of graphic health warning may indirectly incur others macroeconomic issues, examples:

- Undermine tourism and hospitality businesses such as food and beverage, restaurant, hotel and entertainment
- Indirectly encourage illicit alcohol activities that are smuggling, counterfeit and trademark infringement leading to government revenues loss
- Damage brand equity and trademark value of both imported and locally produced liquors
- Affect individuals who consume alcoholic beverage moderately and responsibly

With genuine intention to raise consumer awareness on impacts of harmful use of alcohol, prevent consumer from alcohol related harm and encourage moderation, the European beverage alcohol businesses by collaboration with the leading producers and distributor of beverage alcohol in Thailand have voluntarily displayed the responsible drinking graphic symbols which have been applied worldwide on their products labels aside the mandatory health warning messages demanded by existing laws. Those symbols including “Do Not Drink and Drive” symbol, “Do Not Drink While Pregnancy” symbol, and “Standard Drink” symbol. Please see Picture 7.

**Picture 6: Exist requirements of beverage alcohol label as prescribed by the current laws, Food Act B.E. 2522 (1979) and Excise Tax Act B.E. 2560 (2017)**

Mandatory : Excise Dept	Mandatory : Public Health
<ul style="list-style-type: none"> <li>• Product name</li> <li>• % alcohol</li> <li>• Net weight</li> <li>• Health warning per related law</li> <li>• Name and registered address of a licensee of liquor seller type 1</li> <li>• Name and registered address of a manufacturer</li> <li>• In case of fruit wine with ingredient of grape or grape wine, wordings “Fermented Liquor : Fruit Wine” shall be specified (height <math>\geq</math> 4 mm)</li> </ul>	<p><b>Warning:</b> Sale of liquor to whom at age less than the completion 20 years of age is prohibited ; <b>Drinking liquor will decrease ability in vehicle driving</b> ; Person whose age less than the completion 20 years should not drink.</p>

**Picture 7: The responsible drinking graphic symbols voluntarily applied on beverage alcohol labels by the industry players**



**Recommendation:**

*Introduce laws only to the extent of necessity and repeal or revise laws that are no longer necessary or unsuitable to the circumstances.*

We recommend cautiously considering and reconsidering the need to introduce further alcohol control measures, including the graphic health warning label, by taking into account the extend of necessity, the international trade obligation, impacts to public, investment climate and responsible consumers. Instead, the government should focus to drive effectiveness of the existing regulations enforcement or the Regulatory Impact Assessment (RIA) shall be conducted as commended by members the World Trade Organization (WTO) while granting

stakeholders an opportunity to be consulted prior full implementation of the law in order to ensure that the good regulatory practice is met and such measure is prudent and effective in tackling harmful use of alcohol while enable ease of doing business and favorable tourism and trade environment.

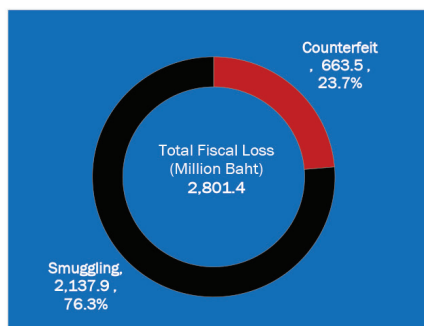
### (3) Illicit alcohol Trade

Thailand illicit alcohol trade is considered transnational crime ranked within the top ten high value crimes. It violates intellectual property rights, undermines country reputation, damages tourism and related industries, results in loss of the government revenue, restrict freedom to trade of legitimate businesses and, importantly, may cause harm to consumer health. The fact that the more premium and fast-moving the products are, the more severe illicit issues encounter (counterfeit and smuggling),

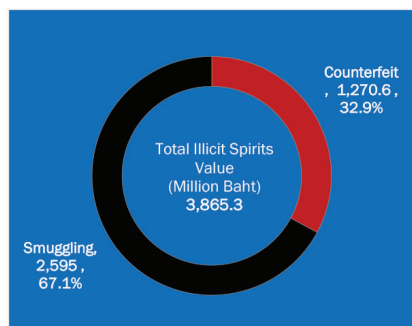
European beverage alcohol which are among the most-loved beverage alcohol products in Thailand, has been targeted by smugglers and counterfeiters.

A recent study on illicit alcohol trade in Thailand conducted by a global research institute, Euromonitor International, based on illicit activities in pre COVID-19 pandemic period, estimates that in 2019 the illicit spirits trade alone costs the Royal Thai Government around 2,801.4 million baht in revenue loss, 663.5 million baht on counterfeit spirits trade and 2,137.9 million baht on smuggling spirits trade. Please see Picture 10. Volume of illicit spirits traded was reported at 6.07 million cases comparing to the legitimate imported spirits volume of 17.94 million litres (1,993.5 cases of nine-liter) as identified by the IWSR report while value of illicit spirits trade was as high as 3,865.3 million baht comparing to legally imported spirits value reported by IWSR of 19,252 million baht. Please see Picture 8 and Picture 9.

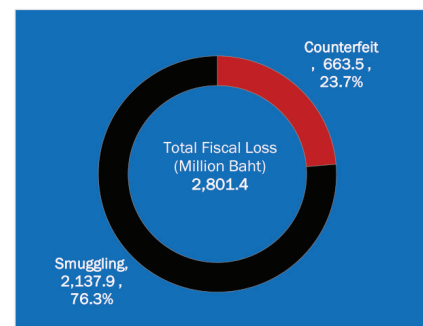
**Picture 8: Volume of Illicit Spirits By Type in 2019 (thousand litres)**



**Picture 9: Value of Illicit Spirits By Type in 2019 (million baht)**



**Picture 10: Fiscal Loss Caused By Illicit Spirits Trade in 2019 (million baht)**



Source: Euromonitor International. A report on Building a strategy to combat illicit trade in Thailand. July 2021.

### (a) Counterfeit VS Smuggling Alcohol

Counterfeit alcohol in Thailand has been seen widely produced by refilling liquor containers, mixed or not mixed with substances, in reused bottles so as to appear genuine, with liquid and smell as close as the genuine one as possible. It is distributed in the form of duty-free goods or tax paid goods to on-premises outlets, small retailers and social media or illegal ecommerce operators at the lower price point to create demand and lure the consumers who hardly identify the different between genuine and illicit goods.

Differently, smuggling alcohol is genuine product but illegally transported cross-border by land or sea from neighbouring countries that are Malaysia, Myanmar, Cambodia and Laos or other origins to avoid high taxes. Currently, it is mostly seen traded along borders and through online platform and chat applications.

### (b) Key drivers of illicit alcohol trade

- i) *High taxes and duties imposed on imported alcohol driving price of imported spirits substantially higher or even doubled the price offered by neighbouring countries, traveling retailers and illicit market allowing high returns and incentives to illicit traders – counterfeiters or smugglers.*
- ii) *Challenges in surveillance and suppression resources, especially, along the land borders and ecommerce platform.*
- iii) *Alcohol ecommerce ban enacted in December 2020 accelerate the traffic of illicit trade online including social media platform and chat*

application since the legitimate online retailers have been removed from the business leaving the opportunities solely to illicit traders to serve consumer' new lifestyle and preference to shop online.

#### **Recommendation:**

***Combat illicit trade through simplifying tax system, stronger 'search and seize' policy and criminal prosecutions.***

We would request the government to consider the following 3 solutions to address illicit alcohol. ***First a reasonable and simplified tax structures, excise and import duty***, that enable reduction of incentives from illicit activities. ***Second, a consistent "search and seize"***, especially, along the border areas, on social media platform, chat applications and websites. ***Lastly, driving a criminal case to successful prosecution*** applying all relevant laws including but not limited to trademark law, landlord liability law and money laundry law to deter offenders from the crime.

## G. Sustainability and Responsibility

European alcohol industry believes that alcoholic beverage is part of culture and a balanced lifestyle. We are committed to supporting the moderate and responsible consumption by adult who chooses to drink while working in partnership with the stakeholders to address the misuse of alcohol such as binge drinking, drunk driving and underage drinking which could cause health and other issues to individuals and society.

We also commit to make positive contributions to the communities whilst our members have strived to deliver the ambition to make positive impacts focusing 3 areas including:

1. Promote moderate and responsible drinking
2. Create inclusion and diversity
3. Ensure sustainability in everything we do

Partnership with stakeholders that are government, civil society, individuals and the entire alcohol industry is a key to success in delivering the impactful programs to support the above ambitions. We have continued investing in our breakthrough programs on alcohol education, road safety, anti-underage drinking and hospitality skills training while continue implementing the industry' self-regulations of responsible marketing practice. Followings are specimen of successful campaigns that we proud of:

## **(1) Alcohol Education**

The alcohol education aims at moderation and responsible drinking, alcohol related harm reduction and empowering consumers with the necessary information to allow them to make appropriate choice. We believe that education could effectively serve the government' objectives to address harmful use of alcohol and some of our global renowned alcohol education campaigns initiated and implemented in Thailand by collaboration with the allied industry players and stakeholders from government, private and civil society sector for nearly a decade to enhance responsible drinking among Thai consumers are as follows:

### **(a) Responsible Drinking Education Program:**

Responsible Drinking Education Program is an interactive educational program to raise awareness about alcohol and to provide people with comprehensive information that will help them make decision about drinking responsibly or not drinking. The program also aims to create awareness of alcohol related harm, drive behaviours change. To date, in excess of 50,000 consumers have been educated through either physical courses or online platform and more than millions have been engaged by the Responsible Drinking Education platform.

For entertainment outlets and bars, we have tailor-made a program known as Responsible Serve Education to ensure that business operators act responsibly, being aware of their roles to provide safety to customers and society.

### **(b) Smashed – Anti-underage Drinking Program:**

SMASHED is a theatre-in-educational program aiming to break the culture of underage drinking and reduce alcohol related harm amongst young people around the world. In Thailand, the program has been implemented since 2017 by partnering with the government agencies, schools and the alcohol industry. To date approximately 10,000 students in major cities had been participated in the program.

## (2) Road Safety

With strong commitment to change the attitudes towards drink driving and to support the Decade of Action for Road Safety 2021–2030 of the United Nations, the European alcohol industry, in partnership with stakeholders including but not limited to the United Nations Institute for Training and Research (UNITAR), Ministry of Transport and Royal Thai Police, has progressed the agenda to reduce road traffic fatalities and injuries and improve road safety, raise awareness of possible harms from drunk driving and other behaviours that are risky such as speeding, lack of helmets, cell phone distractions, drowsy driving, etc.

The Drink Responsibly Education for Road Safety program has been designed to help people make responsible choices about drinking – or not drinking and change attitudes and behaviours toward drinking and to encourage Never Drink and Drive. It is offered in the form of an interactive workshop and the practical e-learning course targeting consumers and general public that includes drivers of private or public transport.

## (3) Hospitality Skills Training

With the objective to support the government plan to transform Thailand to be the world's leading premium and safe tourism destination which could speed up revenue recovery and improving economy at both local and national level, we have launched the Hospitality Skill Development Program for universities students and workers in the tourism and hospitality sector 4 years ago to develop and enhance holistic hospitality and bartending skills.

To date, the program has successfully educated at least 15,000 people a year in the major tourism cities.

See also Reskilling for Economic Recovery in the Tourism chapter.

### Recommendation:

***Focus on education, evidence-based, targeted interventions to reduce alcohol-related harm.***

There is no evidence confirming that an excessive alcohol tax proposal nor strict alcohol control policy are able to tackle the harmful use of alcohol. Instead, they have imposed disproportionate burden to legitimate businesses and freedom restrictive to responsible drinkers. ***Education that promotes responsible and moderated drinking and raise awareness on harms caused by alcohol should be focused more together with the Balanced Alcohol Control Policy as sustainable solution.***

Food and Beverages Working Group would appreciate an opportunity to cooperate with the Royal Thai Government to further delivering success to the country's public health objective.

## 2. Thailand Food Market; Food Exports

### A. Current situation of Thailand's Food Market

The Food industry is one of the more significant and valuable sectors in the economy; including for trade between Thailand and Europe and export from Thailand. Once being one of the biggest net food exporting countries

in the world, Thailand has sometimes been called “the kitchen of the world” due to its abundant natural resources, low-cost workforce, and growing research. The country is a top-ten global producer of some important agricultural products including rice, cassava, sugarcane, palm oil, coconut, pineapple, and natural rubber. Approximately 50% of total land area in Thailand is used for agricultural purposes, allowing over 80% of raw materials to be used in the food industry which can be sourced locally at competitive prices.

According to the National Food Institute (NFI) and National Statistics Office of Thailand (NSO), Thailand’s food and agriculture industry generated approximately US \$30 billion in 2018, 5.7 percent of the country’s GDP, and employed around 12.5 million people.

However, the Food Industry is one among various sectors in the global economy including that of Thailand and Europe which have been negatively affected by the economic turbulence and challenges from the Covid-19 pandemic. As a result, the export sector will rebound premised on a cyclical recovery in the economy and improving global trade, helped by government attempts to ease the lockdown and rollout of extensive stimulus packages in major trading partner economies. Government efforts to restore the economy will likely help sustain greater levels of spending and increase purchasing power domestically for daily consumption including basic necessities like food products for a while.

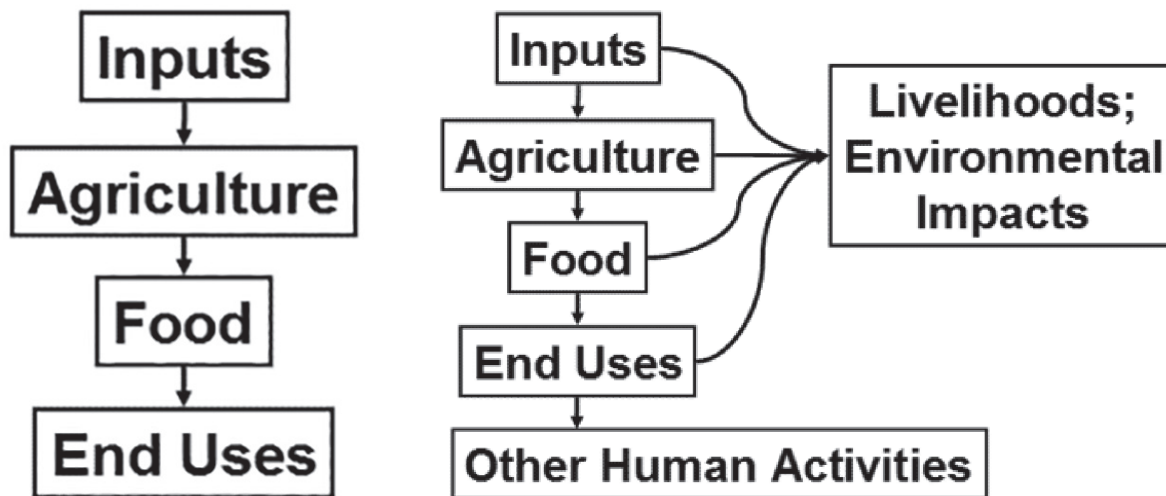
The government’s development targets include establishing Thailand among the global top ten food exporters by 2027. Thailand was ranked in 13th place in 2020 and 11th place in 2019, with the US, the Netherlands, Brazil, Germany and China ranked the top five largest food exporters. Two-thirds of the outputs from Thailand’s US\$ 100 billion food market in 2020 are sold locally, while the country’s food exports are fairly evenly divided between processed and raw foods. Yet most importantly, to achieve the goal of Thailand’s food industry, further policies and actions are urgently required for more sustainable and effective plans for economic recovery in food industry of Thailand.

## **B. Connection between Food Industry and Agricultural Industry**

The two industries are different, but agriculture and food are interconnected and interdependent. Agriculture is the industry producing food crops and other agricultural products (i.e. livestock) for the food industry. It can be said that food processing and production need to rely on the input of raw materials from agriculture as presented in the chart below. Agriculture is the third broad sector in the Thai economy, with 40% of the workforce and 11% of GDP. Low productivity and steady development in agricultural sector of Thailand have impacted the food sector through lower productivity in food industry since they are connected within the same cycle of production. The food sector also takes in foreign sources. The Thai government has focused on technological advancement and smart innovations in agriculture in Thailand. There is a whole chapter in the BOI Guide on Agriculture.

Following Thailand 4.0 vision, the government has attempted to develop *the comprehensive Food-Tech incubation network* in pursuit of strengthening R&D in agricultural development, smart farming, and food technology and food production. The establishment of *Future Food Lab zone*<sup>1</sup> offers a similar one-stop service center to the facilities at Thailand Science Park which provides assistance to businesses in R&D and scaling innovations, such as lab access to facilities and experts to help with developing prototypes, finding raw materials, marketing, and applying for regulatory approval. To strengthen the country's food tech ecology, the facility also helps develop similar operational concepts in seven well-regarded provincial universities, which have a history of producing skilled human resources in the field of agricultural technology.

**Figure: Overview Diagram of Food and Agriculture Systems**



Source: The Pennsylvania State University <https://www.e-education.psu.edu/geog30/node/363>

<sup>1</sup> "Food and Agriculture Systems," *Food and Agriculture Systems | GEOG 30N: Environment and Society in a Changing World*, accessed July 22, 2021, <https://www.e-education.psu.edu/geog30/node/363>, P.2.



## C. Incentives for Food Business in Thailand

Following Thailand 4.0 vision, the government has attempted to develop the comprehensive Food-Tech incubation network in pursuit of strengthening R&D in agricultural development, smart farming, and food technology and food production.

The establishment of Future Food Lab zone adds Thailand Food Innopolis illustrate government effort toward advanced technology, research and development, and industry links.

According to the March 2021 edition of Thailand Investment Review (TIR) from Thailand Board of Investment (BOI), there are multiple incentive packages aiming to attract more capital and investment specifically for businesses in the food industry. The incentives offered include various incentives based on variety of products e.g. The 8-year CIT exemption.

In 2021, the Ministry of Agriculture and Cooperatives (MOAC) has laid out three frameworks toward economic recovery:

- i) Increasing efficiency and improving productivity such as upgrading the cluster farming – to create market linkage, develop the agricultural learning centre, and create rice farming community.
- ii) Empowering grassroots economy which is the new agricultural theory, agroforestry, and organic farming – every community need to

have food security. MOAC also comes up with the programme to reduce the cost of production and tries to encourage farmers to produce more environmentally safe agricultural products. Moreover, the ministry also working with the officials in each province in which we utilize the area-based approach.

- iii) Strengthening economic stability and upgrading basic infrastructure – MOAC try to support the production process and improve basic logistical infrastructure. Besides, the ministry focuses on water retention, irrigation system, certification inspection to ensure our safe products, and how we can produce good feeding for livestock and aquaculture, as well as big data in agriculture.

## D. Agro-Food Trade between Thailand and Europe

The trade value in food products is among the top 20 exported from Europe to Thailand and vice versa and this grew significantly from 2016 – 2019. However, the export value dropped in 2020 due to the Covid-19 pandemic. There is a wide range of food products traded among European nations (both EU and non-EU members) and Thailand. The major items include food crops, meat and dairy products from agricultural products, processed and canned food from the industrial sector, as well as seafood products from fishery. These products will remain strategic for international trade of food industry between Thailand and Europe during and after the pandemic.

**Figure: Evolution of 20 top EU Agri-Food Exports from Thailand 2016-2020**

		Exports						Share in all Agri 2020	Change 2019-2020
		Value (million EUR)					% Change		
		2016	2017	2018	2019	2020			
1	Raw hides, skins and furskins	52	120	156	221	118	11.6	-46.6	
2	Milk powders and whey	69	103	79	100	93	9.1	-7.0	
3	Pet food	94	101	88	92	88	8.7	-4.3	
4	Other feed and feed ingredients	83	107	87	84	74	7.3	-11.9	
5	Food preparations, not specified	85	65	53	54	63	6.2	16.7	
6	Wheat	52	0	5	69	58	5.7	-15.9	
7	Preparations of vegetables, fruit or nuts	47	40	49	44	48	4.7	9.1	
8	Wine, vermouth, cider and vinegar	34	38	43	47	44	4.3	-6.4	
9	Infant food and other cereals, flour, starch or milk preparations	20	29	34	34	43	4.2	26.5	
10	Casein, other albuminoidal substances and modified starches	26	33	27	31	34	3.3	9.7	
11	Offal, animal fats and other meats, fresh, chilled and frozen	27	26	21	29	28	2.8	-3.4	
12	Starches, inulin & gluten	33	32	23	22	25	2.5	13.6	
13	Chocolate, confectionery and ice cream	27	27	28	31	25	2.5	-19.4	
14	Pasta, pastry, biscuits and bread	22	21	23	24	24	2.4	0.0	
15	Fresh milk and cream, buttermilk and yoghurt	15	14	16	19	20	2.0	5.3	
16	Malt	26	16	12	28	18	1.8	-35.7	
17	Gums, resins and plant extracts	13	11	13	15	18	1.8	20.0	
18	Cheese	18	22	20	21	16	1.6	-23.8	
19	Flours and other products of the milling industry	11	13	15	14	14	1.4	0.0	
20	Live animals	12	17	6	8	14	1.4	75.0	
	Remaining Agri-Food products	176	182	192	183	153	15.0	-16.4	

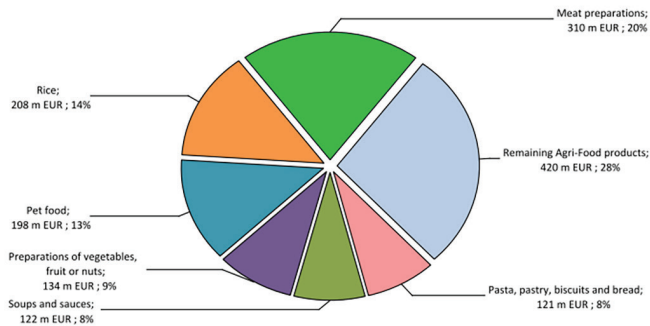
Source: The European Commission

**Figure: Evolution of 20 top EU Agri-Food Imports from Thailand 2016-2020**

		Imports						Share in all Agri 2020	Change 2019-2020
		Value (million EUR)					% Change		
		2016	2017	2018	2019	2020			
1	Meat preparations	396	359	452	409	310	20.5	-24.2	
2	Rice	166	156	179	203	208	13.7	2.5	
3	Pet food	148	163	157	180	198	13.1	10.0	
4	Preparations of vegetables, fruit or nuts	225	234	154	135	134	8.9	-0.7	
5	Soups and sauces	86	95	102	117	122	8.1	4.3	
6	Pasta, pastry, biscuits and bread	95	98	104	121	121	8.0	0.0	
7	Food preparations, not specified	80	92	88	85	82	5.4	-3.5	
8	Fruit juices	96	58	46	41	36	2.4	-12.2	
9	Miscellaneous seeds and hop cones	18	27	36	31	36	2.4	16.1	
10	Casein, other albuminoidal substances and modified starches	17	18	20	35	25	1.7	-28.6	
11	Starches, inulin & gluten	15	14	16	22	23	1.5	4.5	
12	Tropical fruit, fresh or dried, nuts and spices	24	26	26	25	23	1.5	-8.0	
13	Fruit, fresh or dried, excl. citrus & tropical fruit	17	21	23	25	22	1.5	-12.0	
14	Infant food and other cereals, flour, starch or milk preparations	12	12	14	18	21	1.4	16.7	
15	Bulbs, roots and live plants	20	21	22	21	19	1.3	-9.5	
16	Vegetables, fresh, chilled and dried	19	20	18	21	18	1.2	-14.3	
17	Chocolate, confectionery and ice cream	15	16	16	16	18	1.2	12.5	
18	Waters and soft drinks	17	21	19	18	18	1.2	0.0	
19	Raw tobacco	9	12	8	5	8	0.5	60.0	
20	Flours and other products of the milling industry	5	5	5	6	8	0.5	33.3	
	Remaining Agri-Food products	129	100	108	83	64	4.2	-22.9	

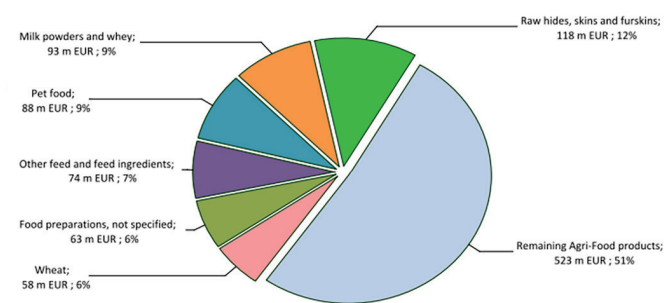
Source: The European Commission

**Figure: Top EU Agri-Food Imports from Thailand by product category in percentage**



Source: The European Commission

**Figure: Top EU Agri-Food Imports from Thailand by product category in percentage**



Source: The European Commission

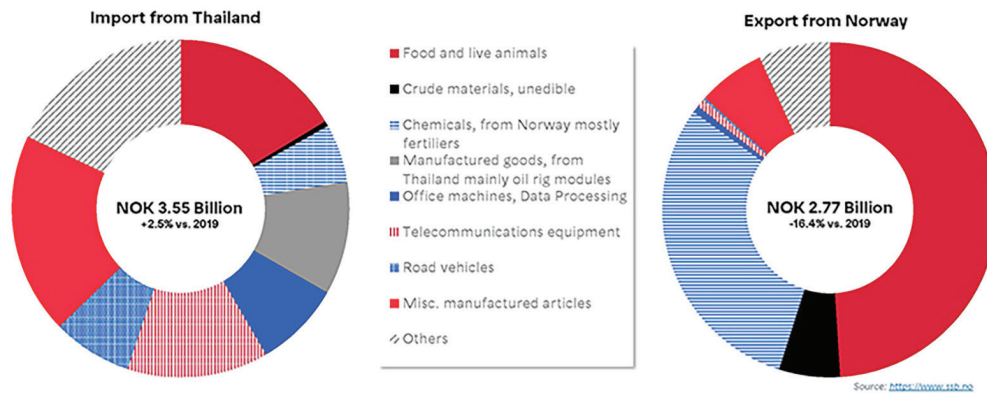
## (1) Case study of Thailand-Norway Seafood Trade

Another significant trading partner of Thailand from Europe is Norway which is one of the key non-EU partners of Thailand. Despite the pandemic, Thailand has continued to import fish from Norway, with salmon at the top of the list, but while the pandemic seriously dented the global economy, Norwegian seafood exports have still recorded an increase. While the figure for growth represents the “second-highest value ever” worldwide, there is a decline compared with the figure for 2019.

Norwegian Seafood Council (NSC) is a public company owned by the Norwegian Ministry of Trade, Industry and Fisheries working with the Norwegian fisheries and aquaculture industry to develop markets for Norwegian

seafood, representing the country’s seafood exporters and the seafood industry.

Seafood products from Norway exported to Thailand normally come with a trademark as a symbol of origin for Norwegian seafood caught or raised in the Scandinavian waters which create more value and comparative advantages to the products. Due to high volume of demand in Salmon consumption, NSC regional office was established here in Thailand in 2019 around implying Thailand’s significance as key trading partner and export destination to the European region. Although NSC’s total performance in the Thai market, including both fresh and frozen products, has been slightly down since last year, overall Norwegian seafood industry have been able to maintain a strong position in the Thai market by working closely with our business partners.

**Figure: Trade statistics Norway-Thailand 2020****Trade Statistics Norway-Thailand 2020**

Source: Norway Connect

## E. Food related Regulatory environment

### (1) Foreign Business Act and other regulation

Agriculture is List 1 or 2 of the Foreign Business Act meaning that foreign companies (ie more than 49% foreign owned) cannot participate. Foreign participation is possible through smart farming support, technology (agri tech), supplies (fertilisers, crop seeds, pesticides, herbicides etc).

The foreign business community sees a great potential of contributing to the development. We would like to restate that there needs to a better understanding of foreign participation in the agriculture sector. Smart Farming and many agricultural activities are promoted by BOI.

In addition the April 2020 Notification about 39 professions (which replaced a 1979 Decree) leaves scope for revision to allow for infusion of expertise in food and agriculture.

### (2) Product Approval & Registration

All food categories, including meat products and fruits and vegetables, are regulated by the Thailand FDA as human-food items. The departments of animal development, the department of Fisheries, and the department of agriculture, on the other hand, demand documentation such as health certificates, phytosanitary certifications, and other paperwork for import licenses. It is important to recognize some of the problems that the sector experiences during the FDA registration process. To begin, the ordinary product registration

procedure takes around 28 business days and can take up to 2 to 3 months due to the need for a document evaluation for food additives and goods. When not all parameters indicated in product specifications are reached, additional documentation or declarations in Thai forms, as well as requirements such as the Codex confirmation statement for food additive registration, are required to assure food product safety.

The Food Act of B.E.2522 (1979) is the main piece of legislation in Thailand which regulates food. This act authorizes the aforementioned Thai FDA to administer and implement the same act; and empowers the Ministry of Public Health to introduce ministerial regulations which set out the procedures for aspects such as applications, registrations and licenses. The procedures are various based on the

The main body responsible for food safety in Thailand is the Food Division of the Thai Food and Drug Administration (FDA), itself part of the Ministry of Public Health. Meat products and fruit/vegetables primarily fall under the responsibility of the department of livestock development and the department of agriculture respectively.

Some challenges that the industry faces during the FDA registration process should be noted. Firstly, the product registration process requires about 2 to 3 months as a review on the documents must be done for food additives and products.

Companies have to submit manufacturer quality certificates. These certificates must be certified by authorities, embassies or certified bodies. If the certificate is not in English language, the importer has to request an English translation version and submit along with original

language certificate. However, companies always face difficulties as some of the manufacturers only able to provide scanned copy documents. Apart from this, certified copy certificate is needed for stock clearance and it has to be renewed once it is expired. Thai FDA also requests additional documents or statements in Thai formats and requirements such as the Codex confirmation statement food additive registration.

Thai FDA has an approved list for enzymes and microbial. Thus, importers have to do food safety assessment firstly before importing products that made from other enzymes or microbial that are not exist in approved list. Despite the challenges that we may face along the way, we remain fully committed to collaborating with the Thai FDA to elevate our product registration process.

### **(3) Fast track regulatory reform**

Fast Track Regulatory Reform committee has been formed with some 9 sub committees, including a 'Guillotine' subcommittee. The Guillotine Project was supported at the highest levels of government. Fast-track regulatory reform reviews large quantities of procedures and laws, reduces regulatory burdens and improves the quality of laws. See more in the CSI chapter. This include following food related procedures:

- Procedures relevant to food manufacturing license (Food Act 1979 and related legislation): FDA is preparing an amendment on section 24 under the Food Act to eliminate the certified copy of certificate of food recipe and allow submitting the application via e-submission; It will reduce the process from 32 working days to 28 working days.

- Procedures relate to food advertisement approval: The submission can be done through e-submission. The process reduces from 10 working days to 8 working days.

## F. Food Security and Sustainability

In the 21<sup>st</sup> century, the world has been dramatically challenged by a wide range of non-traditional threats to security at global, regional, and national level. Undeniably there is no exception for European nations and Thailand as responsible actors to promote sustainability including food security and sustainability. The United Nations has been well aware of these potential threats towards global citizens and security, and consequently, agreed to launch the Sustainable Development Goals (SDGs) which greatly interconnected to Food security. For example, Goal 2: Zero Hunger implies to the availability and distribution of food commodities in the world while Goal 6: Clean Water and Sanitation also covers not only the access and availability, but also the quality and safety of food and water for all. Therefore, it can be clearly stated that the global attempt for food security is one of the most crucial elements for sustainable development to become reality.

Food security refers to the continuous availability of food in varied forms, sufficient quantities, and at reasonable prices allowing people to access it thoroughly. According to the Food and Agriculture Organization of the United Nations (FAO), food security can happen only under the condition that all global citizens have a physical opportunity and economic access to **sufficient, safe, nutritious and quality food** at all times to respond to basic dietary needs and normal food preferences, and to have an active and healthy life. Agricultural sector is one of the

key industries for Thailand, food security is inclusive of not only availability and quantity but also quality, accessibility and affordability of food. Therefore, to achieve food security, Thailand will need to comply with international standards and practices to lift up the quality and effectiveness in production of agricultural products and processed food.

To effectively deal with the current problems in the industry, the structural reform of production and land possession are required to improve the wellbeing and income rate for the farmers and other actors in agricultural and food industry. The dispersion of land ownership explains some of the challenges to the competitiveness of Thai agriculture since it prevents small farmers from obtaining benefits based on economies of scale. For this reason, there has been a push/trend in favour of large agricultural companies to ensure greater stability for farmers.

### (1) European Green Deal

As an attempt towards sustainability and food security, the European Union has launched the **European Green Deal** which sets out how to make Europe the first climate-neutral continent by 2050. The **Farm to Fork Strategy** is at the heart of the Green Deal. It addresses comprehensively the challenges of sustainable food systems and recognises the inextricable links between healthy people, healthy societies and a healthy planet. The strategy is also central to the Commission's agenda to achieve the United Nations' Sustainable Development Goals (SDGs). The goal is to ensure European food remains safe, nutritious and of high quality. It must also be produced with minimum impact on nature.

The Farm to Fork strategy will directly impact the food export industry and agricultural industry which will need to comply with the environmental oriented regulations and criteria of exported foods to the European Union. Thai food exporters and producers then must ensure that the exporting products have been produced and delivered to the destinations in EU with minimal spill over effects on environment.

This strategy will contribute to a circular economy from production to consumption. For example, sustainable use of pesticides, front-of-pack nutrition labelling, and welfare of farmed animals are some examples of top priorities that Thai producers and exporters will need to adjust to the regulations to fit in the criteria to export the products to EU markets.

## (2) Sustainable Supply Chain

As an internationally recognized supplier of a wide variety of food commodities, Thailand's agriculture and food processing sectors are highly competitive and have the capacity to produce innovative and high-value products at competitive costs.<sup>2</sup>

Despite much development, challenges and access barrier to International market i.e. Europe remain opened. With new demand from Consumer point of view, transparency and traceability of food supply chain are becoming more significant. Environmental impact, Ethical compliance, condition of workers and Corporate Social Responsibility (CSR) also become essential requirement and prerequisite for markets these days.

European Union has Regulation 2018/848 on the production and labeling of organic agricultural products,

<sup>2</sup> BOI TIR September 2019

which effective in 2021 to promote sustainable production of organic products and build consumer confidence for organic products produced within the European Union or imported non-member states.

## G. Future Prospect for Food Industry and Trade; EU FTA & RCEP

The future of the food industry in Thailand is inevitably dependent on multilateralism. Treaties such as RCEP and a Thailand-EU FTA are important. There is huge potential in the Thai food industry, primarily given the abundance of raw materials, pool of skilled labour, steadfast institutional support, and advanced infrastructure. Government agencies, not only the BOI, have promoted productivity, quality, technology and R&D in the food industry. As mentioned before, the food industry is at the top of the agenda of the Thai government's efforts, given its importance to our population.

According to Asia Trade Centre, the key benefits for participating in multilateral agreements or cooperative frameworks like RCEP and EU FTA are 1) lowering Compliance Costs for Regional Processed Food Trade 2) minimization or removal of tariff barriers. Neoliberal attempts from the western hemisphere including Europe to liberalize global economy apparently have potential to help reduce the costs of food trade and production for the firms in the industry due to the elimination of existing tariff barriers between member countries.

### (1) EU-Thailand FTA

The core benefits of Thai Food Industry from the EU – Thailand FTA are mostly relevant to the Tax privileges and opportunities for market expansion for local agriculture

and food businesses exporting fresh natural food, processed and frozen food, herbs, etc. The FTA ratification will even more contribute to the higher domestic competitiveness of Thailand in some particular kinds of products.

By the time an EU-Thailand FTA comes into force, most tariffs barriers will be eliminated and minimized so as to facilitate trade and business activities to be done more easily with less unnecessary costs of production along the way from the production to the destination abroad. It will also help reduce and maintain the prices of foods and agricultural products to be more affordable and accessible for consumers. Finally it will potentially lead to more sufficient and higher quality food to be available for more people in the markets. This is when we move closer to food security and sustainability in general.

Based on the results of a study on the expected economic effects by 2030 of ongoing and upcoming trade negotiations on the EU agricultural sector conducted by the European Union, In the context of the 12 analysed FTAs, the EU will import a significant amount of rice from Thailand in 2030 (EUR 250 million, corresponding to 18% of the EU rice imports). After the implementation of the 12 FTAs, overall rice imports increase between 2.3% and 3.3% under the conservative and ambitious scenarios. The additional imports are dominated again by Thailand, which under the simulated scenarios enjoy an improved market access through tariff cut and whose exports increase between EUR 51 million and EUR 108 million. Once EU – Thailand FTA is ratified, it is estimated that in 2030, Thailand will have the highest market share into the EU among FTA partners and it expands progressively under the two scenarios from 72% to 76% and 79% respectively.

## **(2) RCEP and its impacts on processed foods in Thailand**

In case of Thailand-based diversified food company making peach jam for export, the company uses peaches sourced from China and produces jam in a factory located in Thailand<sup>3</sup>. Under RCEP, tariffs on peach jam from not only drop to zero, but provide a single rule of origin that will allow the peach jam firm to reap benefits without having to change sourcing or transform production processes. Therefore, in short, RCEP can solve problems of food trade and production by minimizing protectionist policies like tariffs on agricultural products which also helps reduce the cost of production in food industry, as well as setting single-standard rules of origin including certificate of origin for products from all markets.

According to Ministry of Agriculture and Cooperatives, since Thailand has endorsed the RCEP agreement, MoAC now at the stage of educating the farmers and stakeholders on the agreement's details. For example, how they can benefit from the agreement, especially in terms of productivity, processing, tax incentives, and SPS Agreement. Also, how Thailand will gain the competitive advantages, after Thailand fully involved in the RCEP agreement. We are trying to push this for the cabinet's approval.

## **(3) Healthy Trend of Food production and consumption in Thailand**

Having a healthier lifestyle choice is increasingly trending in Thailand. It grew by almost 10% from 2016 to 2020.

<sup>3</sup> Deborah Elms, "Unpacking RCEP: Benefits for Processed Foods," Asian Trade Centre (Asian Trade Centre, January 14, 2021), <http://asiantradecentre.org/talkingtrade/unpacking-rcep-benefits-for-processed-foods>, P.7.



Consumers demand for more natural ingredients and products which are free from gluten and lactose.<sup>4</sup> The market for gluten free and keto-friendly products is also booming where most of them are imported from United States, Australia, UK and other European countries. A survey conducted in Thailand suggested that more than half of the surveyed respondents were interested to learn more about healthy foods, indicating certain awareness towards health and wellbeing among Thai consumers.<sup>5</sup>

The demand for plant-based food and beverages includes meat alternative products which continue to grow rapidly by capturing the interest of Thai consumers. The plant-based food market in Thailand is growing at 2% to 10% annually and it is expected to surge another 10% to 35% by 2024.<sup>6</sup>

Shifting trends of consumption in international community in Thailand show demand for Ready-To-Eat (RTE) foods and plant-based foods. The consumption value of healthy food and beverages in Thailand was recorded at 100 billion Thai baht from 2018 to 2020. Approximately 19.10% plant-based protein products are exported from Thailand to ASEAN countries between these years. Almost 74% Thai consumers believes in the efficiency of dietary supplements and 59% Thai consumers increased their dietary supplement intake after the outbreak of Covid-19 pandemic (Manakitsomboon, 2021a).

Protein powders and protein substitutes claiming attributes of muscle-building, brain and immunity support are continuously growing as there is a demand for it. The growing and ageing population are looking for high protein sources from both animal and plant-based products to help delay the onsets of ageing. The impact of COVID-19 has increased the protein demands within the community

as immunity-boosting functional food are not limited to only protein rich snacks but also cereal, energy bars and dairy drinks (Wichaijiranath, 2020). There are 3 out of 5 Thai consumers who like to try new products that offer new experiences such as hybrid flavors or category crossover between food and cosmetic products (Puranabhandu, 2021). For example, mochi ice cream pancakes with salted filling, coconut water enriched with minerals and inulin-fiber.

Tapping into this new trend, food startups and corporations in Thailand have rolled out plant-based meat produced from various materials such as mushroom, jackfruit, rice, coconut and beetroot, as well as beans, to serve both local and global markets.

Amidst the ongoing pandemic and more intense global warming, many consumers worldwide have turned towards more plant-based and healthier foods. This global shift, which is highlighted by the entry of plant based meat in major global food chains, points to a favorable future for Thailand as not only a major producer of agricultural products such as beans, fruits, vegetables, herbs, cassava, corn and rice but also a promising producer of future food. In light of this development, the Ministry of Agriculture and Cooperatives is seeking to develop R&D, plant-based food, and alternative protein sources. The Ministry is also collaborating with the Ministry of Higher Education, Science, Research, and Innovation and BOI to identify economic crops in order to add value to the Thai economy.

We also would like to applaud the effort of the Ministry of Agriculture and Cooperatives on enhancing and upgrading the agriculture industry to adopt new technologies and encourage new FDIs and foreign know-how to ensure the industry keeps up with global trends/competitions and remains sustainable for the future.

<sup>4</sup> (Manakitsomboon, 2021b)

<sup>5</sup> Manakitsomboon, 2021a

<sup>6</sup> (Sirikeratikul, 2021).

# Healthcare and Pharmaceuticals

## SUMMARY OF RECOMMENDATIONS

### **1 Sustainable economic recovery with healthy manpower and sustainable financing**

- 1.1 Exploring solutions to enhance patient access including alternative access models, innovative and value-based financing models, as well as incentivising self-care policy as contributing solution to promote sustainable healthcare financing, access, and budget management.
- 1.2 Establishment of Risk-sharing or Manage-Entry Agreement through Regulatory Sandbox as an alternative solution for sustainable healthcare financing post-COVID recovery.

### **2 Innovation to boost competitiveness and economic growth**

- 2.1 Aligning the amended Patent Law with international standards and practices enabling efficient registration and protection for increased technology transfer and investment.
- 2.2 Recommendation to increase number of competent patent examiners in particular in the fields of chemical, device and pharmaceutical researches to speed up review process.
- 2.3 Adopting patent term restoration and data exclusivity to create a holistic framework enticing innovation in long term.
- 2.4 Amending the inclusion criteria to the innovation list to include international innovators to reap full benefits and position Thailand as an innovation hub.

### **3 Digital Health as growth driver opportunities and patient care enhancement in the new normalcy**

- 3.1 Establishment of regulatory framework to enable legalized e-pharmacy and facilitate patient care, drug dispensing and delivery remotely.
- 3.2 Enabling new regulatory frameworks to improve and facilitate access to new technologies i.e. 3D printing medical devices.

### **4 Promoting Ease of Doing Business to attract sustainable health investment**

- 4.1 Improve regulatory efficiency through encouragement of regulatory framework and requirements according to risk-based approach including simplified registration for self-care medicines.
- 4.2 Continued dialogue between the Royal Thai Government and stakeholders in the sub-regulation development under regulatory reform for medical devices.

- 4.3 Transparent procedures for healthcare and pharmaceutical products pricing and reimbursement, with due consideration for the value of innovation to therapeutic outcomes and clinical needs rather than purely cost saving.
- 4.4 Level playing field in government procurement, removing local and government preferential treatment.
- 4.5 Further liberalization of the Trade Competition Law to enable trade and investment.

The COVID-19 pandemic does not only significantly impact the healthcare sector but also critically impact the economic development at all levels, national, regional and global. In addition to the disease's mortality and public health effects, it may lead to significant and lasting economic implications, including productivity losses, supply chain disruptions, labour dislocation, and potential financial pressure on the government, businesses, and households.

**Figure 1: GDP Growth in ASEAN countries, as 2021 forecast**

<i>GDP Growth</i>	<i>2019</i>	<i>2020</i>	<i>2021 (f)</i>	<i>Δ no-Covid-19</i>
Indonesia	5.0	-2.0	5.2	-7.2
Malaysia	4.3	-5.6	6.3	-8.6
Philippines	6.1	-9.5	9.7	-12.1
Singapore	0.7	-5.8	7.2	-6.3
Thailand	2.4	-6.1	4	-6.5
Vietnam	7.0	4.2	8	-4.2

Source: Rabobank, Macrobond

On health perspective, COVID-19 creates an additional burden on healthcare system which ordinarily faced the challenges of resources and budget constraints. This became even more critical during the COVID-19 situation including the necessity of demand forecast and supply accuracy to prevent the supply shortage of necessary medicines and medical devices. Besides, it is clearly perceived how urgent need for research and development of innovative solutions are; vaccines and treatments are vital to mitigate the health impacts of COVID-19 pandemic and restore confidence as well as to preserve financial stability and revive the economic growth.

This clearly illustrated as remarkable situation that health crisis has critical impact to the entire global economy, including in ASEAN region and Thailand (Figure 1: GDP Growth in ASEAN countries, as 2021 forecast). According to the information from the National Economic and Social Development Council (NESDC) with TDRI Institute calculation (published in January 2022), Thailand's GDP growth in 2021 reflected to be at only 0.75%. It also shows that healthcare is inseparable from the economy as one engine among its other economic drivers. Therefore, there is strong need to reprioritize healthcare investment and establish innovative mechanisms and solutions to ensure a sustainable healthcare system including its financing.

This would support to maintain people in the country in good health, with their basic needs fulfilled and a good quality of life, thus allowing them to contribute to the economic development.

In the recent past years, the research institutes in Thailand have proactively engaged in research and development in the inventive solutions and novel medicines. As a result, some examples could be explicit during the COVID-19 pandemic as various solely R&D projects or collaborative approaches as a value chain partner of global innovative supplies. Generally, many companies from developed economies are outsourcing R&D to more efficient partners in developing economies, where the innovation ecosystem is sufficiently mature for technology transfer. This enhances Thailand opportunities in starting to emerge as a semi-developed competency for R&D in medical research. Since Thailand has been promoting the collaboration in research and development to drive its economy forward, pharmaceuticals, medical devices and healthcare sectors are in the key focused sectors, it stands ready with its pool of researchers and existing unindustrialized research to benefit from this trend given pro-innovation reform in key strategies, policies and laws.

For medical devices sector<sup>1</sup> as “new S-curve industries”, it has continued to grow in tandem with the rising number of patients and aging population since it is considered life essentials., the sector is also resilient to changes in

<sup>1</sup> *Medical device sector included medical devices and medical equipment. Medical devices are used in the medical, nursing and midwifery professions to provide treatments for bodily conditions such as IV sets, IV cannulas, Surgical sutures, X-Ray equipment, ultrasound machines, reagent and test kits, and dental devices. Medical equipment refers to surgical and medical equipment e.g., Surgical instruments, Infusion pumps, scalpels, thermometers, blood-pressure monitors, and items such as disposable gloves and masks.*

economic conditions. The tax incentives; supported by the government in facilitating the investment and commercialization, help to develop industrial capabilities in this sector. This led to the research and development of new, lower-cost products and improve the ability to compete on world markets.

To return health and economic resilience with sustainable system and become a regional leader in healthcare services and in the medical research and development sector, Thailand needs to develop a long-term innovation embracement policy that is strong and consistently implemented; there is a need for a better coordination 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. Besides, exploring new channels to facilitate patient cares, maintain the good health of people, and health resource optimization in the new normalcy. Moreover, solutions like digital health could be developed through the advancement of digital transformation and pandemic forced-consumer adoptions. Finally, a sustainable system and sustainable healthcare financing for innovation requires coordination among the public and private sectors.

Respectively, this document aims to underscore some of key points that need to be unlocked in order to enhance Thailand health and economic resilience, and to enable Thailand opportunities and competitiveness in becoming an innovation-led economy and a true leader in healthcare provision.

EABC would like to support the Thai government through collaborations and partnerships to enhance all sustainable solutions for better access of innovative medicines, medical devices, self-care medications and digital health.

### **A. Sustainable Economic Recovery with Healthy Manpower and Sustainable Financing**

Having adequate and sustainable healthcare financing is one of the key enabling factors to ensure a greater chance of success in innovation development as a key engine to drive the country's economy, due to the market environment. It is important for the government to manage to find appropriate and adequate sources of funding, since increasing chronic diseases and life expectancies associated with an aging population tend to drive overall healthcare expenditures up. This will also ensure sustainable access to healthcare, treatment outcomes and quality of life for patients, which require public and private efforts to provide alternative and collaborative solutions in long term. Other options such as reimbursement of home care, the promotion of self-care and health promotion with improvement of public health literacy will also reduce government burden on healthcare budget and encourage a more sustainable health system.

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

Moreover, establishment of the solutions for sustainable healthcare financing could additionally support the investment promotion through improvement of innovation-friendly ecosystem encouragement. European Association for Business and Commerce (EABC) would like to submit the proposal to contribute and enhance sustainable healthcare financing in two key aspects:

#### **(1) Enhance Efficiency in the Existing System:**

- i) Exploring Risk-sharing/ Manage-Entry Agreement for innovative medicines i.e. cancers, rare diseases
- ii) Incentivising self-accountability in health (self-care) i.e. tax and non-tax incentives to promote self-care practices, health insurance incentive through taxation program
- iii) Ensuring reimbursement and facilitating procedures for digital intervention

## (2) Revisit Core Financing Model to Upgrade the System:

- i) Utilising Sin Tax efficiently for healthcare budget management i.e. reinvesting into healthcare program (vaccination, early diagnosis to enhance early treatment option for cost efficiency, other health promotion)
- ii) Exploring options beyond traditional financing – earmarked schemes (e.g. cancer fund), individual health savings accounts, social impact bonds, crowdfunding
- iii) Reallocating additional supplementary health package

One alternative financing solution that could benefit sustainable healthcare financing is Risk-sharing or Manage-Entry Agreement for innovative medicines. EABC observed that the establishment in other countries of Risk-sharing/ Manage-Entry Agreement as Public-Private Collaboration could be one of the key elements to ensure sustainable healthcare investment, as “alternative / innovative mechanisms that the private company shares the financial risks at national level with the government in patient treatment costs”. This can support the patients’ access to needed treatment, as well as a government budget management in predictable and manageable manners. Consequently, it would result to achieve superior health outcomes at the same or reasonable incremental costs. Risk-sharing/Manage-Entry Agreement has various types of models for financial-based and performance-based agreement that can suit the characteristic of each medicine and government budget management objectives to ensure financial stability.

EABC would like to support and collaborate with the government on the development of a “risk-sharing” framework, proposed key requirements, and registry for consideration through “regulatory sandbox development”, to benefit patients and government management:

- Policy and regulations related to procurement and reimbursement, to enable “risk-sharing” reimbursement for patient access as proposals
- Explore feasibility in establishment of Confidentiality agreement for risk-sharing implementation under Thailand contexts
- System for medicines reconciliation, tracking and data sharing platform for reimbursement (among payer, hospital, and company)

### Recommendation:

1. Exploring solutions to enhance patient access, including alternative access models, innovative and value-based financing models, as well as incentivising self-care policy as contributing solution to promote sustainable healthcare financing, access, and budget management.
2. Establishment of Risk-sharing or Manage-Entry Agreement through Regulatory Sandbox as an alternative solution for sustainable healthcare financing post-COVID recovery.

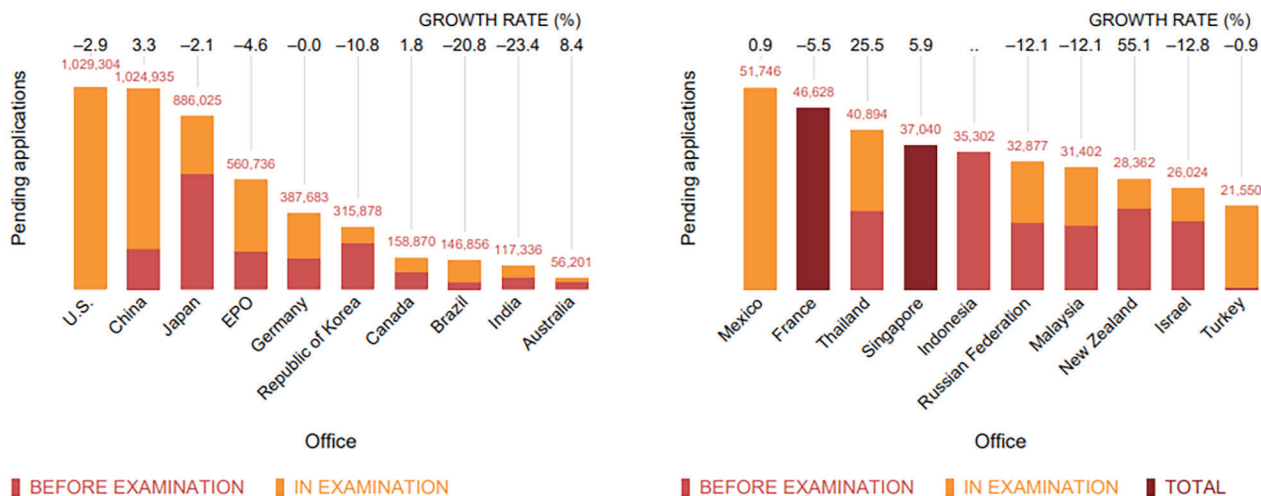
## B. Innovation to Boost Competitiveness and Economic Growth

In alignment with government direction to promote research and development (R&D) and drive the economy through innovative- 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.
- The proper ecosystem for intellectual properties is therefore one key element to support and attract direct investment to the country.

In compliance with World Trade Organization (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 for Thai patent approval (from application to grant) is 12.6 years. Data collected by the World Intellectual Property Office (WIPO) on potentially pending application at the top 20 Patent Offices in 2020 illustrated an improvement in patent backlog for Thailand comparing to the past. However, if Thailand would like to move towards the direction of intellectual economy, it would require a significant reform in innovative ecosystem to attract investment and patent would be the key element for consideration.

#### A44. Potentially pending applications at the top 20 offices, 2020



Note: EPO is the European Patent Office. Application processing varies between offices, making it difficult to measure pending applications. In some offices, patent applications automatically proceed to the examination stage, unless applicants withdraw them; in others, applications do not proceed to examination, unless applicants file a separate request for examination. To take account of procedural differences, pending application data are separated between (a) all patent applications, at any stage in the process, that are awaiting a final decision by a patent office, including those for which applicants have not filed a request for examination (where applicable), and (b) patent applications undergoing examination for which the applicant has requested examination (where such separate requests are necessary).

Source: WIPO Statistics Database, September 2021.

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

Since the Department of Intellectual Property recently introduced the new draft of Patent Act amendment in 2018, which is under proposal for cabinet consideration, EABC would like to strongly support the streamline of patent registration process that focuses on the examination bottleneck; especially on substantive examination phase and compulsory licensing that should remain to align with international standards;



- The change of opposition system from pre-grant opposition to post-grant opposition: EABC supports this direction. However, the legislative amendment should be aligned with the post-grant opposition under the international context, in which the opposition process would occur only after the official 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.
- Exercising the compulsory licensing should be in accordance with international rules, and only in exceptional circumstances and as a last resort. Decisions should be made through fair and transparent processes that involve participation by all stakeholders and consider all relevant facts and options.

EABC support the establishment of a patent term restoration or adjustment in the national law, to address unreasonable patent examination delays, which would support efficiency of patent prosecution. Patent term restoration or adjustment has been established in the international legal framework regarding unreasonable delay in patent registration and in marketing authorization procedures, which would redress the impingement on the patent rights of affected patent applicants for lost time and investment. Observing international standards such as those of the European Union, patent term restoration (also known as a supplementary protection certificate) will also be given to a patentee wishing to

encourage innovation by compensating the patentee for the long period of time taken to obtain regulatory approval of their human and veterinary medicinal products on the occasions of unreasonable delay. Such restoration applies only after the corresponding general patent expires and has a maximum lifetime of five years. The term ‘extension’ has been seen and distorted as somewhat of a scheme, biased towards monopolization, in which de facto is prejudiced to those investing and working in research and development. The term ‘restoration’ better illustrates the concept.

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

In addition to Intellectual Property ecosystem, tax & non-tax incentives conducive to innovation are vital to attract research collaborations and sustainable foreign direct investments (FDI) in R&D and innovative activities. 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.

As the government has a strong agenda to attract FDI and collaboration towards research partnership and research investment in Thailand, the Innovation List, which has been established to incentivize innovation development through public utility, should also be enabled the enlisting for the multinational companies in order to encourage international collaborative investment towards innovation in Thailand. The inclusive criteria should additionally value the research investment and embrace the direction to move the country towards innovation development.

#### **Recommendation:**

1. Aligning the amended Patent Law with international standards and practices enabling efficient registration and protection for increased technology transfer and investment.
2. Recommendation to increase number of competent patent examiners in particular the fields of chemical, device and pharmaceutical research to speed up review process.
3. Adopting patent term restoration and data exclusivity to create a holistic framework enticing innovation in long term.
4. Amending the inclusion criteria to the innovation list to include international innovators to reap full benefits and position Thailand as an innovation hub.

## **C. Digital Health as growth driver opportunities and patient care enhancement in the new normalcy**

Digitalization plays a vital part in the healthcare sector to improve healthcare access, quality, and efficiency. Digital Health is one among several key enabling factors to help improving individuals' health and wellness sustainably and efficiently in an aging society. The digitalization also means that there would be more opportunities to enhance services delivery to a broader population with efficient and limited resources.

Laws and regulations regarding digital health are important key enabling factors to facilitate adoption of technology. EABC and its members are ready to share their knowledge and international experiences to benefit system and regulatory development. We would like to address the topics highlighted as follows:

### **(1) E-Pharmacy**

EABC has noted rising needs for e-pharmacy in various countries, which would support the measures to control COVID-19 since patients and other consumers can access essential medicines while avoiding the risks of physical visits to pharmacy stores. This could additionally help reducing overcrowding in hospitals, so that healthcare professionals can concentrate on COVID-19 management and more complex diseases.

The European Union, Australia, Switzerland, Singapore, and Philippines, for example, have legalized e-pharmacy. There are certain requirements which pharmacies must comply in order to be able to proceed prescriptions from

physicians or patients online, dispense prescription-only medicines, and handle home delivery to patients. Official e-pharmacy allows patients to receive medical consultations with pharmacists via online platforms, and to receive dispensed medicines at home, without worrying about interacting with other patients or about leaving home. It can additionally help to solve the problems of illegal selling of medicines and counterfeit medicines through online channels since patients and consumers can have access to official e-pharmacies endorsed by the competent authorities.

Establishing e-Pharmacy in Thailand would require the development of relevant laws and regulations, to allow official registration and legalization of e-pharmacy with specific requirements or guidelines to ensure patient safety, privacy, and delivery of quality medicines to patients. The current physical pharmacy stores which have been qualified under Thai Good Pharmacy Practice Guideline could be potentially certified as e-pharmacy in addition if they could comply with certain laws, regulations, and guidelines similar to those implemented by other countries.

EABC also shares the government's concern regarding patient safety and exposure of various players via online system, which is why it supports the establishment of a properly regulated system. Respectfully, EABC would be pleased to share EU experiences and international practices regarding e-pharmacy, as well as medicine delivery requirements to benefit Thai patients and the public health system.

## **(2) E-Health Records, Health Information and Infrastructure**

Presently, both patients and healthcare professionals generate a tremendous amount of information. If that information is digital, it can be managed, processed and applied to bring efficiency, convenience, and produce solutions which are not possible with paper records. For example, controlled access to records by authorized health professionals, artificial intelligence (AI), machine learning and data analytics can be implemented to transform the healthcare industry and improving health outcomes, as it is currently the case in many countries. Typical use cases include telemedicine and precision medicine, both on the agenda in Thailand that is keen to promote health services to Thai and international clients as well. Apart from service improvements, digitalization and AI can address globally increasing healthcare costs as well. However, a major obstacle to the realization of the full potential of electronic health data is that it is stored in diverse systems and formats with weak interoperability and no common architecture.

EABC experienced the solution for management of the fragmentation, incompatibility and inaccessibility of patient data and its consequences as a standard and transferable personal electronic health record (PEHR). This must be combined with a safe and secure mechanism for storage, identification, authentication, download, transfer and upload. Further, the solution requires a firm legal basis regarding data protection, privacy and patents.

Other parts of this Position Paper (such as the Digital Economy/ICT chapter) contain more details on data privacy.

### (3) Opportunity for New Technology Development and Adoption to Enhance Patient Care in Digital Arena

3D printing or Additive Manufacturing (AM) is a process of building an object layer by layer, based on a digital model. It is the opposite of conventional subtractive manufacturing. These can be used in various areas of medical device, i.e. implantable orthopedic devices, non-invasive prosthetics, etc.

The advantage of 3D printing is that designs can be altered rapidly without the need for re-tooling, and complex devices can be created and built as a single piece if needed. This technology could be applied to either mass-produced medical devices or custom-made medical devices, at the request of a qualified practitioner and in accordance with the specifications of the qualified practitioner according to the needs of an individual patient.

Mass-produced medical devices manufactured using 3D printing technology could be proceeded under the same current regulatory framework and requirements as those of traditional manufacturing techniques, based on the risk classification of the device. However, there is lacking clarity on regulatory pathway for the custom-made devices which would be customized for individual patients.

EABC would like to explore collaboration for further development of regulatory framework and requirements to support the patient access to ensure the patient benefits from this new technological advancement timely.

#### Recommendation:

1. Establishment of regulatory framework to enable legalized e-pharmacy and facilitate patient care, drug dispensing and delivery remotely
2. Enabling new regulatory frameworks to improve and facilitate access of new technology i.e. 3D printing medical devices.

### D. Promoting Ease of Doing Business to Attract Sustainable Health Investment

Fast Track Regulatory Reform (through ‘Gullotine’ initiatives) and the Licensing Facilitation Act, B.E. 2558 (2015) related to efficiency in licensing could contribute to significant improvement in registration and approval timeline, in order to facilitate business operations and competitiveness, especially in the pharmaceutical licensing. Whilst this development supports the policy agenda of Medical Hub Super Cluster by enhancing the regulatory environment to promote ease of doing business and investment climate. The regulatory efficiency and regulatory resource optimization could be achieved through risk-based assessment approach to streamline regulatory framework and requirements. One example could be illustrated through simplified registration for self-care medicines which the regulatory requirements could be assessed basing on the product risks which could result as reduced dossiers or simplified evaluation procedures. This would enhance business climate to attract more investment in the selfcare area which would increase role during and post-Covid recovery to encourage the better health system.

Medical Device Act: The EABC supports reasonably increased registration fees to improve the efficiency of the registration system with clear timeline for license approval process. We additionally support the new registration process based on risk-based classification (ASEAN Harmonization), which is aligned with international regulatory standards. However, the practical and effective implementations will rely on sub-regulations being properly developed. It would be strongly required to ensure that the developments of sub-regulations according to both recent new Acts aligned with international standards and practice, and also facilitate implementation including the transition period. The development of electronic systems for medical devices registration will provide economic and other benefits, both directly and indirectly to the medical devices and healthcare industry as a whole. Fast track approval for new medical devices and medicines for COVID-19 treatment will also facilitate the health and public health issues that will in turn benefits the economic recovery of the country.

Market environment and ecosystem to promote access to innovation would be another key enabling factor for innovation and attracting the investment, especially in the current circumstances of the procedures for reimbursement and national government procurement, which if improved for clarity, consistent enforcement, and transparency, will support the investment promotion.

Referring to the reimbursement landscape, Thailand is a semi-reimbursement country, but only for a partial population the 'Civil Servant Medical Benefit Scheme (CSMBS)' the reimbursement of any innovative medicines is applicable immediately after marketing authorization.

The policy related to innovative medicines and pre authorization programs, such as Oncology Prior Authorization (OCPA) and restricted reimbursement criteria under the Comptroller General's Department, could impact the patient treatment outcomes and limitation of access, as there is the list of targeted therapy which will be under non-direct reimbursement condition that patients will need to have advance payment for the medication treatment affecting significant financial burden and challenges to the eligible patients to obtain the access and reimbursement. Moreover, any innovative medicines registered after the 1st January 2018 are not eligible for any reimbursement. This creates major concerns on process and selection criteria for OCPA listing and exclusion to non-direct reimbursement, which are unofficial and inconsistent across individual company and products.

In addition, under the current circumstances of the national government procurement, the preferential treatment has been granted to its state-owned pharmaceutical enterprises. It is observed that state-owned pharmaceutical enterprises can benefit particular privileges that other privately-owned domestic and foreign companies could not receive, since the government procurement regulation allows the state-owned enterprise, specifically the Government Pharmaceutical Organization (GPO), strong preferences and price advantages that the hospitals need to purchase medicines exclusively from the GPO. This practice distorts the market mechanisms of the public healthcare and pharmaceutical market. Therefore, EABC would like to propose that a level playing field should be exercised with open competition, in order to best serve consumers and patients. Any preferential treatment for state-owned

pharmaceutical companies or national companies should be eliminated. It is essential that legislation, in procurement, regulatory frameworks, and Trade Competition Law, must be reviewed for further liberalization to allow competition on an equal basis.

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

**Recommendation:**

1. Improve regulatory efficiency through encouragement of regulatory framework and requirements according to risk-based approach including simplified registration for self-care medicines
2. Continued dialogue between the Royal Thai Government and stakeholders in the sub-regulation development under regulatory reform for medical devices
3. Transparent procedures for healthcare and pharmaceutical products pricing and reimbursement, with due consideration for the value of innovation to therapeutic outcomes and clinical needs rather than purely cost saving.
4. Level playing field in government procurement, removing local and government preferential treatment.
5. Further liberalization of the Trade Competition Law to enable trade and investment.

# Industry

## SUMMARY OF RECOMMENDATIONS

### 1. Role of industry in Thai Economy

- 1.1 Industrial sector is one of the major engines to drive Thailand's economy. While the world is in an 'Industry 4.0 or IR 4.0' state of development, for Thailand this largely means the 'Thailand 4.0 vision' with all the necessary business transformation needed.
- 1.2 Post-COVID-19 growth rates will depend on how deep the eventual downturn is in 2022 and how well-equipped Thailand is to support economic recovery through FDI and other measures.
- 1.3 Thailand's manufactured exports were driven by the low production cost of labor-intensive products. But low cost of production is only a temporary source of competitive advantage as this advantage can be eroded by increases in wages.
- 1.4 These points play into the importance of developing an innovative and attractive sector.

### 2. EU FTA and its impact on manufacturing sectors

- 2.1 An EU-Thailand FTA can potentially lead both EU and Thailand towards similar growth in terms of export values and GDP.
- 2.2 The proposed FTA should be perceived to be more than a trade facilitation arrangement – i.e. to unlock liberalization, market access and necessary reforms for ease of doing business. Estimation of 5% uplift to GDP through service sector liberalisation.
- 2.3 An EU-Thailand FTA is expected to be a deal of a high standard which would cover broader and deeper new trade issues, such as environmental and labor protection and responsible business conduct. Also, alleviation of regulatory requirements

### 3. Sustainable Supply Chains

- 3.1 The role of the industrial sector to reduce greenhouse gas emissions towards sustainable industrial development is essential.

### 4. Promotion of Industry

- 4.1 Various Incentives through Government promoted BOI, IEAT and EEC

### 5. Ease of doing business/Doing Business Easily

- 5.1 EABC sees foreign participation in public procurement as positive. But to protect SMEs for some time, specific deferrals are possible.

5.2 Legislative improvement concerning business practices needed to be revised to enhance transparency, predictability and ease of doing business in Thailand including through digitalisation.

## 6. The important role of Engineering in the context of Industry and Thailand 4.0

6.1 The transformation to Industry 4.0 will replace repetitive and routine jobs with robotics and automation, and new skills need to be developed to better support non-routine / task oriented / Project base activities.

6.2 Restrictions on participation in engineering appear in the Foreign Business Act, the April 2020 Notification restricting 39 Professions (which replaced a 1979 Decree) and at a professional membership level, the Engineers Act. Particular disciplines in engineering are more regulated than others; review and reform is needed to ensure the right skills are available.

## 7. Inadequately skilled workforce

7.1 call for the Thai Government to consider developing plans for the mid- and long-term to provide a sufficient workforce of qualified graduates to match industry requirements as well as incentives for education, are commendable.

## 8. Inadequate infrastructure and plans to overcome

8.1 High-speed train, deep sea ports are the chief facilities linking an economic system with the international market and therefore the main trade hubs in accordance the Thai government's policies to promote the country as a regional logistics hub.

## 9. Rule of Law; law making - Public Consultation

9.1 Effective consultation is a key part of achieving well-supported laws and regulations which applies to this sector as others.

## A. Background about Industry

### (1) The role of industry in Thai Economy

Any economy is typically divided amongst industry, services and agriculture. Industry has manufacturing at its core and includes related services. Apart from services, it is the driver of exports. Thailand has successfully transformed its economy from agriculture to export-

oriented manufacturing, while integrating key manufacturing production into the regional value chain, particularly in automobiles and electronics. This shown that industrial sector is one of the major engines to drive Thailand's economy While the world is in an 'Industry 4.0 or IR 4.0' state of development, for Thailand this largely means the 'Thailand 4.0 vision' with all the necessary business transformation needed.



### (a) Importance and its impact on Overall Economy

Thailand has an open economy, with the value of exports and imports equivalent to about 97.93 % of GDP in 2020. Thailand GDP from Manufacturing is projected to trend around THB 742 bn in 2021 and THB 753 bn in 2022. The Office of Industrial Economics (OIE) in the Ministry of Industry has maintained its forecast for the manufacturing production index (MPI) for 2022 to around 4-5%.

Unfortunately, this outward-orientation economy makes Thailand's economy adversely impacted during the global outbreak of COVID-19 in late 2019 due to disrupt global supply chains and lesser demand during pandemic. Post-COVID-19 growth rates will depend on how deep the eventual downturn is in 2022 and how well-equipped Thailand is to support economic recovery through FDI and other measures. It is hence essential to attract new FDI inflows and support existing investments by way of

expansion and flexibility. A message that Thailand is open for business is essential to avert business failure, loss of Thai jobs and shore up trust and confidence in Thailand as an investment destination.

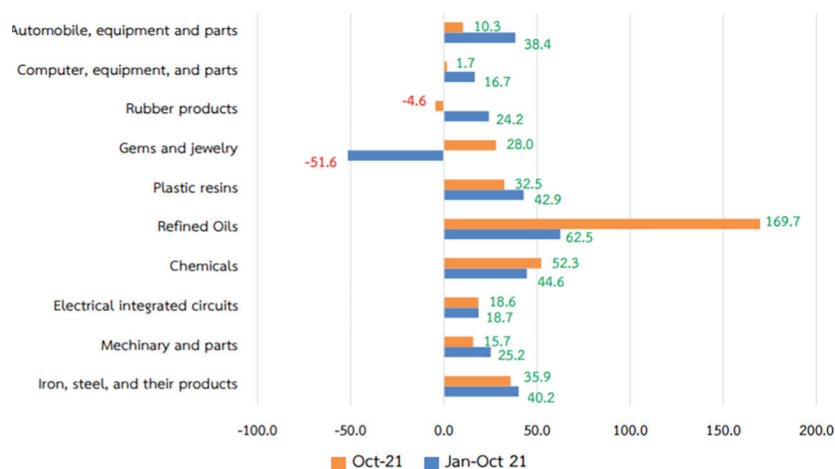
As of Statistic from the Trade Policy and Strategy Office (TPSO) under Ministry of Commerce, Thai exports from January until October 2021 reached 222,736.4 million USD with the growth rate of 15.7 percent.<sup>1</sup> As of October 2021, Thailand Exports to EU markets expanded by 14%.

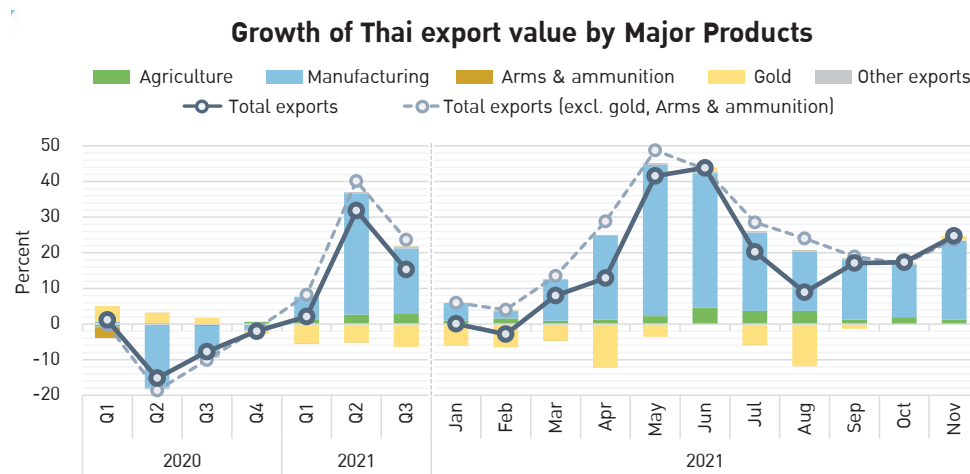
For the first 10 months of year 2021, Thai industrial product exports expanded by 14.5 percent (YoY). Highlight products are automobiles, equipment, and parts (+38.4%), electronic integrated circuits

(+16.7%), gems and jewelry (exclude gold) (+24.2%), iron, steel, and their products (+40.2%).

**Figure 1: Top 10 Thai Export Products (Source: TPSO)**

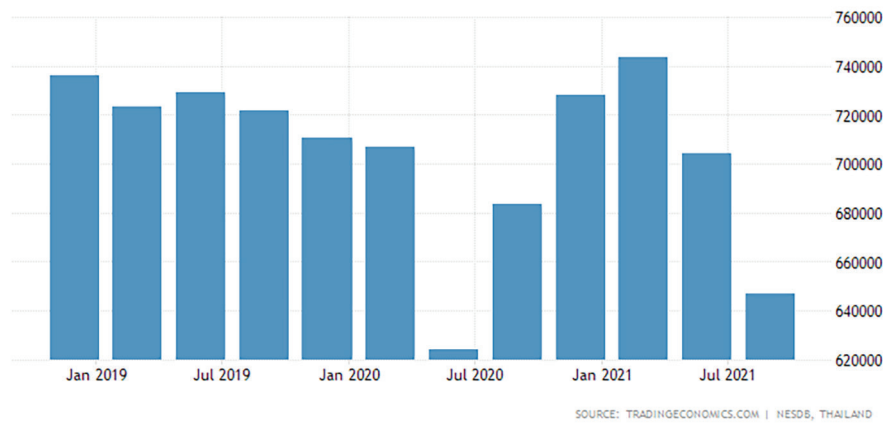
Top 10 Thai Export Products- October 2021



**Figure 2: Presentation from Dr. Kirida Bhaopichitr (Source: TDRI, 6 Jan 2022)**

## (2) EU – Thailand Figures and Statistic related to Industry

The EU is Thailand's fifth-largest trade partner, after ASEAN, China, Japan, and the US, representing about 7.5 percent of the country's total trade. On the other side, Thailand is the EU's 26th largest trade partner, and the 17th biggest for imports. The foreign direct investment from the EU in the manufacturing industry accounted for 632.05million USD in 2019.<sup>2</sup>

**Figure 3: GDP from manufacturing from January 199 – July 2021 (Source: NESDB)**

The EU's biggest category of imports from Thailand is, by far, machinery and appliances, which represented 52.3 percent of total imports in 2020.

**Figure 4: Leading EU Imports from Thailand (Source: Council of the EU and the European Council 2020)**

Leading EU Imports from Thailand (2020)		
Product	Value	Share of total (%)
Machinery and appliances	€9.27 billion (US\$11 billion)	52.3
Plastics, rubber, and articles thereof	€1.65 billion (US\$1.9 billion)	9.3
Transport equipment	€1.09 billion (US\$1.29 billion)	6.2
Foodstuffs, beverages, tobacco	€1.08 billion (US\$1.28 billion)	6.1
Pearls, precious metals, and articles thereof	€1.05 billion (US\$1.24 billion)	5.9

Source: Council of the EU and the European Council

Graphic©Asia Briefing Ltd.

Mirroring the EU's imports from Thailand, machinery, and appliances is the bloc's largest export category to the country, making up 36 percent of the total in 2020. Products of the chemical or allied industries were the EU's second-largest category, at 18.2 percent of total exports.

**Figure 5: Leading EU Export to Thailand (Source: Council of the EU and the European Council, 2020)**

Leading EU Exports to Thailand (2020)		
Product	Value	Share of total (%)
Machinery and appliances	€4.11 billion (US\$4.8 billion)	36.0
Products of the chemical or allied industries	€2.08 billion (US\$2.4 billion)	18.2
Transport equipment	€752 million (US\$892 million)	6.6
Optical and photographic instruments, etc.	€701 million (US\$832 million)	6.1
Base metals and articles thereof	€689 million (US\$818 million)	6.0

Graphic©Asia Briefing Ltd.

### (a) Thailand's advantage in labor-intensive production

As a small open economy, Thailand's exports' share in the world market was less than 3 percent. The very low world market shares imply that Thailand does not have the market power to set its own export prices. As a price taker in the world markets for these goods, it is the supply factor that is the most important determinant of the international competitiveness. Between the periods of double-digit export growth from 1986 to 1995, Thailand's labor cost was still low. China had yet to enter the World Trade Organization (WTO) in 2001 to compete with Thailand's labor-intensive products and to divert FDI away from the country. Thailand's manufactured exports were driven by the low production cost of labor-intensive products. But low cost of production is only a temporary source of competitive advantage as this advantage can be eroded by increases in wages.<sup>3</sup>

From 1960 to 1976 Thailand implemented an import substitution industrialization policy. Despite the pros and cons of this policy, Thailand is said to be a successful case. The economy was able to grow rapidly during implementation of the first three national plans (1960-76). The success of the economy can be attributed to several factors, but it suffices to mention only four important ones: (a) the availability of cheap, resource-based raw materials, (b) the supply of low-wage unskilled labor, (c) tax exemption on capital machinery imported into the country, and (d) the realization of managerial acumen.<sup>4</sup>

<sup>3</sup> Bhanupong Nidhiprabha, "The Rise and Fall of Thailand's Export-Oriented Industries," <https://direct.mit.edu/asep/article/16/3/128/17153/The-Rise-and-Fall-of-Thailand-s-Export-Oriented>.

<sup>4</sup> Juanjai Ajanant, "Trade Pattern and Trends of Thailand," *Trade and Structural Change in Pacific Asia* (1987), <https://core.ac.uk/download/pdf/6899795.pdf>.

## B. Major strategic and business issues

### (1) EU FTA and its impact on manufacturing sectors

Many EU companies base their Southeast Asia production in Thailand due to its location in the region and status as ASEAN's second-largest economy after Indonesia. Thailand liberalised manufacturing some decades ago. Establishing an FTA would loosen trade and investment barriers for EU companies, making Thailand an even more attractive regional base. Implementing EU-FTA agreements can potentially lead both EU and Thailand towards similar growths in terms of export values and GDP. Support from Thai businesses sector is essential. The Impact Report of the Institute of Future Studies for Development (IFD) contracted to the Ministry of Commerce projects many positive outcomes, one being 5% uplift to GDP through service sector liberalisation.

According to the list of leading EU imports from Thailand in 2020<sup>5</sup>, if the FTA comes into force, machinery and appliances, electronics, and vehicle manufacturing stand to be winners. However, the proposed FTA is perceived to be than a trade facilitation arrangement, but it will be more about also unlock liberalization, market access and necessary reforms for ease of doing business.

The agreement also pushes regulatory requirements, such as the protection of intellectual property, customs clearance and trade facilitation, etc., which on the one hand is regarded as an upgrade of operations in accordance with international standards, creating transparency and certainty to the business environment and foreign investment.

<sup>5</sup> See the list under section A(2) Figures and statistic p.2

An EU-Thailand FTA is expected to be a deal of a high standard which would cover broader and deeper new trade issues, such as environmental and labor protection and responsible business conduct. It is also noted that Thai government has emphasized the BCG model (see more in the Cross Sectoral Issues chapter) and Green Supply Chains because this economic model is consistent with the SDGs and global trend to be environmentally friendly.

Additionally, the EU's FTA with Vietnam which went into effect in 2020 has a positive influence on Thailand coming to an agreement. Like Thailand, Vietnam is strong in export-driven manufacturing, but its low EU tariffs give it a competitive advantage in the region. With reference to EVFTA, Vietnamese export value is predicted to increase around 4-6 percent from the EVFT which equals to 19 billion USD and is expected to skyrocket to 75 billion USD in 2028. Furthermore, Vietnam GDP is expected to increase about 400 million USD from Vietnam tariff reduction on EU and about 3 billion USD from EU tariff reduction on Vietnam which overall sums up to 3.6 billion THB.<sup>6</sup>

### **(a) FTA EU Thailand within the worldwide scenario between China – US**

Most international enterprises are looking to relocate their export business in Asia: major attractive economies today are Vietnam, Indonesia and Thailand.

Thailand has an advantage with its developed Automotive Industrial sector and has an incentive not to lose the

<sup>6</sup> *Institution of Future Studies for Development paper, Chapter 3, p.48.*

challenge to become the primary manufacturing hub for foreign companies in Asia to produce goods and services.

In addition, supported by Thailand's strategic location in the heart of the Mekong region with close proximity to China and India, which offers opportunities for cross-border trade and investment as well as infrastructural development, the potential Thai-EU FTA could attract more foreign direct investment, boosting employment levels and strengthening the economy.

A robust EU-Thailand FTA would be one important element as a route to economic recovery for both Thailand and Europe and support effecting necessary reforms. As such, we wholeheartedly believe that the opportunity to create meaningful and material change should be seized.

## **(2) Sustainable Supply Chains**

The role of the industrial sector to reduce greenhouse gas emissions in the direction of sustainable industrial development is essential.

The European Commission is setting plans for the world's first carbon border tax (CBAM), on imports of carbon-intensive steel, aluminium, cement, fertilizers and electricity, as part of a programme to meet its new climate target. The measures to promote Thailand's greenhouse gas reduction in industry sector are in line with the ASEAN Community Work Plan in terms of economics (2016 - 2025). The activities that support the economy must protect the environment and natural resources. More information can be found in the Cross Sectoral Issues chapter.

### **(3) Promotion of Industry**

#### **(a) Thailand Board of Investment (BOI)**

The BOI offers an exemption of corporate income tax for 5-8 years for 12 targeted S-curve industries for the Eastern Economic Corridor (EEC), consisting of the original S-curve, 5 new S-curve plus 2. The old five S-curve industries include automotive; smart electronics; affluent, medical and wellness tourism; agriculture and biotechnology; food for the future. The new five S-curve industries consist of robotics, aviation and logistics, digital, biofuels and biochemical, and medical hub. The two additional targets are defense and education development.

New Investment Promotion Policies include the exemption of corporate income tax for specified periods, relaxation on import duties on machinery and raw materials, as well as granting non-tax incentives. It also targeted new activities such as clinical research, elderly care services, international procurement office, and electric vehicles with 3-8 years CIT exemption depending on the activities. The investment promotion measures, particularly in EEC targets investment projects, qualify for at least 5-year tax holidays including Technology and Innovation Development activities.

#### **(b) Industrial Estate Authority of Thailand (IEAT)**

The Industrial Estate Authority of Thailand (IEAT) grants investors permission to own land for carrying out industrial activities; permission for foreign technicians, experts and spouse or dependents to stay in the country; permission to bring foreign technicians and experts to work under industrial activities; and permission to take or remit

foreign currency abroad. These incentives are available in both the general industrial and export processing zones.

Tax incentives from the IEAT include exemption from import duties, excise tax and VAT on machinery and raw materials; exemption or refund of duty from the import of local goods into the export processing zone for the production of goods for export; and exemption from export duties, excise tax and VAT on exported goods.<sup>7</sup>

#### **(c) Eastern Economic Corridor Office (EEC)**

Eastern Economic Corridor Office (EECO) has launched an extensive range of incentive packages for potential investors through the EEC Act. Investment incentive packages for investment projects in the Eastern Economic Corridor (2020-2021) are varied from standard tax package to additional tax incentives according to key features and targeted activities of business.

For the year 2020, there were a total of 453 investment projects amounting 208 billion baht, accounting for 43% of the country's total investment applications. Foreign investment totalled 115 billion baht, accounting for 55% of total investment in EEC. The top three investors are from Japan, China and the Netherlands.

Going forward, all the related agencies have agreed to work together on measures to facilitate investments such as the One Stop Service Center the and National Single Window, focusing on streamlining customs procedures and greater clarity with regard to the tax rates for new businesses and industries. It was also agreed to expedite

<sup>7</sup> <https://www.wha-industrialestate.com/en/why-thailand/industrial-estate-authority-of-thailand-ieat>

the negotiation of international agreements aimed at increasing the country's competitiveness and enhancing investors' confidence in order to attract investment in new industries.

#### **(4) Ease of doing business or 'Doing Business Easily' – general**

As with all sectors, ease of doing business is a vital objective in manufacturing and other aspects of industry. Please find more information about ease of doing business (or Doing Business Easily) in the Cross Sectoral Chapter.

Specifically to the Industry sector are:

##### **(a) Restriction of foreign entities to participate in public tender/ Procurement**

EABC considers it is important that foreign companies can participate in state supply. EABC sees this as overall positive for the economy and government procurement. However, impact on SMEs can be an issue. To protect SMEs, a threshold limit or via a 'handicapping' process can be set. Adjustments have been included for Vietnam and Malaysia for example in the CP TPP.

EABC sees foreign participation in public procurement as positive. But to protect SMEs for some time, specific deferrals are possible.

##### **(b) Legislative improvement for foreign businesses in the industry**

In order to have a chance of achieving high-income status within the expected time frame (2037), the World Bank

recommended productivity enhancement and greater FDI (including through service sector liberalisation). In the period since, more immediate COVID-19 survival and economic support measures have crowded out long-term strategic goals. Legislative improvement concerning business practices e.g. regulation of role representative office, Licensing Facilitation Act, Machinery import licences and etc. needed to be revised to enhance transparency, predictability and ease of doing business in Thailand including through digitalisation.

Implementation of these strategic and longer-term goals is amongst the very things necessary for post COVID-19 economic recovery. Liberalisation of services is not only a means of overcoming the middle income trap, but also vital for stimulating industries and economic recovery. This not only applies to new projects but expansion of existing investments, saving existing investments and keeping Thai jobs. If Thailand wishes to stay regionally competitive, EABC recommends considering new approaches and fresh trade-in-services strategies. Neighbouring economies have acceded to treaties or entered new treaties. Thailand must avoid at all costs the trade and investment diversion of her prominent and successful global value chains (GVCs) – for example: in goods, the automotive value chain, and in services, hospitality and tourism. If sectors in the Thai economy do not allow transfer of new technologies or new service industry paradigms, they are not likely ever to get ready to compete. Thailand would be out-competed and would never get out of the "middle income trap".

European Know-how & knowledge Transfer will support identify the most relevant leading business practices and technologies and to introduce the demand side -

sophisticated consumer base to help supporting Thailand to be in ideal position to become a leader of innovation-driven economy for Asia.

### **(5) The important role of Engineering in the context of Industry and Thailand 4.0**

One of the objectives of Thailand 4.0 (an embodiment of 4IR, or Fourth Industrial Revolution), called Raising human value, is the reform of the education system to prepare Thai nationals for Thailand becoming a first world nation.

The transformation to Industry 4.0 will replace repetitive and routine jobs with robotics and automation, and new skills need to be developed to better support non-routine / task oriented / Project base activities.

The reform of the education system must cover all phases, from primary school through to University level. Development of enquiring minds rather than rote learners is needed. Engineering is an important discipline and embodies several skill sets which will need transformation of programmes and to support training a new generation of engineers to new market and technology requirements. Primary schools must help to lay the base of the new economy, Universities need to build the future and specialize engineers in the fields that - out of the school system – are really needed.

Worldwide the trend is to optimize production layouts and connectivity between machines, systems and intralogistics handling, in order to customize products more and make processes more flexible and efficient within the plants, increasing control over processes,

enhancing automation mechanisms, improving collaboration between people, machines and software.

Engineering needs to evolve to be the driver for this revolution.

The Internet of Things (IoT) is facilitating the development of new services for the traceability, not only logistic but especially after sales; the maintenance of the product thus enhances a new value opening opportunities wider and wider. In this context the role of Industrial Engineering could be revolutionary: strict connection between ICT and traditional factory to re-design systems and processes to be autonomous and interlinked at the same time; the smart machines will take decisions while technicians and operators need to define algorithm of the process. This is opening already new opportunities as well as new professionalism and new way of working. More information on IoT can be found on Digital Economy/ICT chapter.

The boundaries between mechanics, electronics and artificial intelligence are thinning more and more, the design is pushing towards unimaginable fields until only a few years ago; machines are increasingly interlaced with each other, reducing human error and leaving more space for humans for more creative activities and innovation. Engineering must take this into account and move orientation towards digitization, big data management, process automation and must have a wider vision of the past.

Restrictions on participation in engineering appear in the Foreign Business Act, the April 2020 Notification restricting 39 Professions (which replaced a 1979 Decree) and at a professional membership level, the Engineers Act.



Particular disciplines in engineering are more regulated than others. A strategic and critical review of these restrictions is needed.

### (a) Foreign Business Act

The Foreign Business Act regulates activities of businesses having more than 49% foreign ownership. The Foreign Business Act can play a role in economic recovery. List 3 has been changed four times (2013, 2016, 2017, 2019) only.

Serious consideration should be given to suspending the whole of List 3 (with possible minor exceptions which we invite the Ministry of Commerce to identify) for a period of three years to give the best possible chance for this means of supporting economic recovery.

Under such an umbrella, we also propose to prioritize areas of focus, in stages, for permanent removal:

- Services – logistics;
- Services – engineering (item 9), with clearance to participate locally and tender for publicly-owned, privately-funded capital projects and infrastructure.

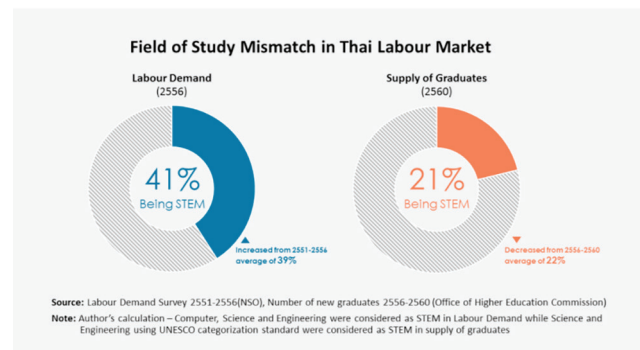
More information on the Foreign Business Act can be found in the Cross Sectoral Issues Chapter.

## (6) Inadequately skilled workforce

The solution to lack of skills in the workforce has to embrace both the inclusion of foreigners and ease of skills engagement, and education and training on the domestic front.

Despite an increase in the number of graduates and qualified vocational workers, Thailand continues to experience labour shortages due to continually increasing requirements for higher skilled and technology-intensive manufacturing. The proportion of qualified and high-skilled graduates with a bachelor's degree in all jobs in the workforce in 2017 accounted for only 16% of the total workforce of approximately 37.5 million workers, while 60% of graduates with bachelor's degrees had entered the workforce, hence created "Qualification Mismatch"<sup>8</sup>. Only 21% of total graduates in 2017 are in the field of STEM (Science, Technology, Engineering and Mathematics)

**Figure6: Labour Demand Survey 2551 -2556, Number of new graduates 2556-2560 (Source: Office of Higher Education Commission)**



Several kinds of public and private educational institutions operate in Thailand. The public institutions number almost 100 higher education institutions and 429 technical and vocational colleges, as well as 88 skills development centres or vocational training institutes offered by the Ministry of Labour. On the other hand, private companies

such as CP, Toyota, S&P, IRPC, etc. also offered around 489 technology colleges, with approximately 80 higher education institutions including CP-Panyapiwat, PTT-Vistec institutes. The collaboration between public and private educational institutions is needed to support workers and their skill development. Recommendation for Human Resources Development related Industry sectors are below:

#### **(a) Initial vocational education to produce technicians**

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

In the industry sector which relies heavily on skilled workers. Based on the findings among European businesses in the sector, it can be found that there is still existing consistent gap of knowledge and skill between European and Thai engineers. This gap is usually left as a cost of the companies which need to develop a reliable design team to support their local. In order to maintain sustainability for qualified graduates, we recommend the promotion of international dual study programs during vocational school

which government can support to invite overseas expert to conduct local trainings or MoU for exchange programme.

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

#### **(b) Higher education to produce engineers:**

- i) Increase the use of the existing Cooperative Education system in the universities as it is similar to an apprenticeship system in Germany or France.
- ii) Help the universities to adjust their engineering/sciences curricula to be "competency based" and not "content based" in order to be adapted to the needs of the work in the companies.
- iii) Make compulsory significant periods of internships in companies during the 4 years study of the students,
- iv) Increase "project based learning" approach where the students receive a mark based on the project implemented in the company (alone or in groups) by using identified competencies connected to the curriculum, it will develop the soft skills of students and knowledge of the companies of the teachers.

- v) Support workers having a Higher diploma level for further studies to get a bachelor degree by using the systems of recognition of prior learning and experience
  - vi) Disseminate innovative learning approaches like the Constructionism project implemented by SCG and KMUTT
  - vii) Support the improvement of the teaching method/pedagogy to be more “learner-centred” in order to develop analytical/critical thinking, teamwork.
  - viii) Support exchanges between Thai and foreign universities to enable Thai students to spend a long time abroad which helps to develop soft skills.
  - ix) Implement incentives schemes for teachers spending times in companies: they could stay in the company for 2 months, bring their knowledge (training staff, preparing documents,..) in exchange of learning the working context of the company.
  - iii) At government level: study and implement lifelong learning modalities developing in various countries in Europe, (example: the Personal Training Account in France...)
  - iv) At sector level: set up partnerships (based on budget sharing) between Thai and European federations (like FTI in Thailand or its 33 industrial groups) in order to share ideas of innovative lifelong learning strategies which are developing in Europe.
  - v) Support companies (tax deduction, program design...) implementing large programs to upskill workers, example: SEAGATE who upskilled hundreds of women operators on analytical skills
  - vi) Support the improvement of the teaching method/pedagogy in government training centres to be more “learner-centred” in order to develop analytical/critical thinking, teamwork of the trainees.
  - vii) Develop “professional qualifications training”: 6 months to 1 year including 4-6 months in the institute and 2-6 months in the company. They should be led by the sectors or federations.
- (c) Continuing vocational training, skills development to upskill, reskill or just provide additional skills.**

- i) Support the existing Thai leading training organisations like HCBI of the FTI, FTPI, automotive/electrical/steel institutes with equipment, pedagogy.
- ii) Strengthen the recognition of prior learning and validation of experience system to enable pathways between education levels

#### **(d) Foreign universities**

Thailand is facing a potential education crisis. The falling birth rate and aging population, combined with the technology disruption, mean that higher education institutes must adapt to survive. In 2019 statistics from the Council of University Presidents of Thailand (CUPT) showed that of the 300,000 available seats yet only around 230,000 had applied for placements.<sup>2</sup>

In the past, foreign universities have been able to offer collaborative programmes with local universities leading to foreign awards. Although not mandatory, many apply for the Office of Higher Education Commission's (OHEC) approval as a guarantee of quality and recognition of their qualifications for public sector jobs or further studies at public providers.<sup>3</sup>

As part of the government effort to develop Thailand into a higher education hub, in September 2017 new policies were passed aimed at promoting higher education through 'highly potential' (sic) foreign institutions.

The then Minister of Education invoked Article 44 to allow foreign universities to operate in Thailand. Under these new policies, a foreign higher education provider who wishes to establish a campus in Thailand can receive expedited approval by a committee headed by the Ministry of Education. The ministry provides a number of incentives for campuses established within the Eastern Economic Corridor (EEC), including exemptions from income tax, ability for foreign land ownership, and ease of issuing visa to foreign staff.

Such an 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.

However, commercial incentives for foreign universities to operate in Thailand are not compelling. One foreign university is a collaboration between Carnegie-Mellon and KMITL. But each in effect provides its own staff and degree in this 'joint' model.

## **(7) Inadequate infrastructure and plans to overcome**

Public infrastructure plays a major role in Development of a broad base for raw commerce and primary operations, increased distribution of exports, reduce transportation costs, industry Diversification and regional Economic Expansion: increased demand and an optimized supply chain.<sup>9</sup>

High-speed train, deep sea ports are the chief facilities linking an economic system with the international market and therefore the main trade hubs in accordance the Thai government's policies to promote the country as a regional logistics hub.<sup>10</sup>

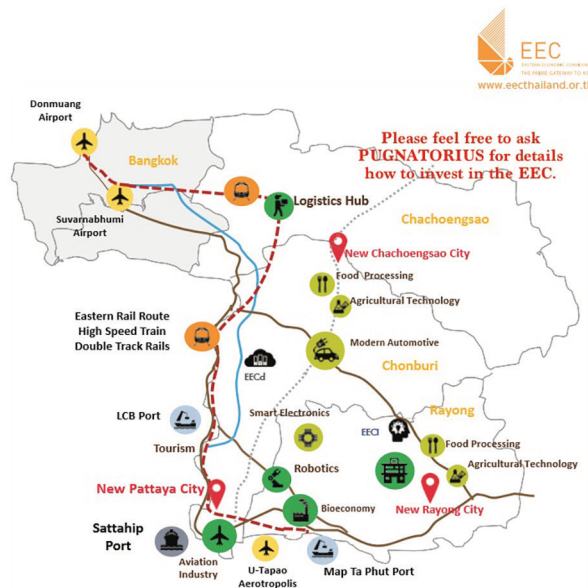
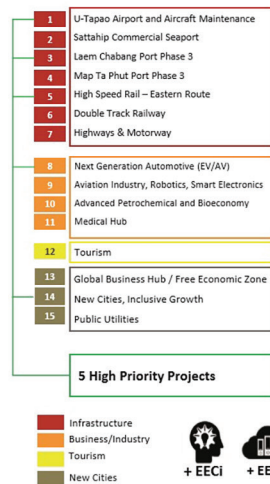
<sup>9</sup> <https://siam-shipping.com/ports-in-thailand/>

<sup>10</sup> [https://www.tci-thaijo.org/index.php/jms\\_psu/article/download/61583/50745](https://www.tci-thaijo.org/index.php/jms_psu/article/download/61583/50745)

Figure7: EEC Focused Project and Investment Plan in 5 years (Source: EEC)

### EASTERN ECONOMIC CORRIDOR (EEC)

4 Core Areas 15 Projects and  
5 High Priority Projects



## (8) Supply chain limitations

Lots of supplies for industrial business are now not available in Thailand, whether China and India remain the only choice for a complete range of raw material and large selection of capable suppliers. However, in long term, Chinese and Indian economy will gradually be moving from labour intensive to be more sustainable and advanced industry. Meanwhile, suppliers will be facing more and more strictly environmental regulations.

The main supply chain in Thailand is set around Automotive and Oil and gas sector, while for other business there is a significant limitation supply availability; major sources

are in raw material, in particular special steel grades; castings are wide available but only for medium small size, and special steel castings / forging are very limited.

Additionally, we need to be aware of some disadvantages from overseas supply base as there will be, for examples, extra freight cost especially on oversized/bulky product, risk to be managed on trial/new order on supplier development point of view, technical /Engineering support and follow up where

required additional international travelling and it will be even more difficult in this situation of continuing pandemic of COVID-19.

For that reason, there will be plenty of opportunities for industrial business in Thailand to be able to emphasize in developing more completed supply chain in the country to mitigate any risks of supply disruption and minimize any disadvantages from the above-mentioned points.

### **(9) Rule of Law; law making - Public Consultation**

Effective consultation is a key part of achieving well-supported laws and regulations. The APEC Report on Good Regulatory Practices (GRP)<sup>11</sup> is a good basis for understanding the requirements. A regulatory impact assessment is usually needed.

The much misunderstood, most important element of a consultation process is user-group education and buy-in. By participating in consultations, companies think about and focus on what proposed changes will mean, they may

<sup>11</sup> [https://www.apec.org/-/media/APEC/Publications/2021/4/13th-Conference-on-Good-Regulatory-Practices/221\\_EC\\_13th-Conference-on-Good-Regulatory-Practices-GRP13.pdf](https://www.apec.org/-/media/APEC/Publications/2021/4/13th-Conference-on-Good-Regulatory-Practices/221_EC_13th-Conference-on-Good-Regulatory-Practices-GRP13.pdf)

engage with lawyers, operations research specialists, economists and others able to provide information on world experience. Even if they do not achieve everything they ask for in their submissions, they have a sense of moral and commercial ownership of the law and generally want to make it work. Without such ownership, a 'minimal compliance' mentality emerges where the spirit and intent of the law tends to be avoided, and some may even wish legally to avoid the application of the relevant law. Thus an engaging consultation process is essential. All of this applies just as much in the industrial sector as it does in others.

Please see Cross Sectoral issues chapter for more details.

# 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

## A. 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:

- i) It allows different risks to be managed more efficiently;
- ii) It encourages loss mitigation;
- iii) It enhances peace of mind and promotes financial stability;
- iv) It helps relieve the burden on governments for providing all services of social protection to citizens via social security systems;
- v) It facilitates trade and commerce, supporting businesses and economic growth;

- vi) It mobilises domestic savings; and,
- vii) It fosters a more efficient allocation of capital, advancing the development of financial services.

## B. 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 favourable 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:

- i) A need to ensure the financial stability of all the players in the market is they insurers, intermediaries or other service providers, thus capital requirements and adequate solvency measures remain vitally important.
- ii) 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.
- iii) A need to ensure that all legitimate insurance claims are paid speedily and each and every customer is treated fairly.
- iv) 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 qualifications by institutions like the Chartered Insurance Institute (CII London) or LIMRA & LOMA.

- (v) A need to ensure a consistently applied standard of ethics throughout the insurance industry.

## C. 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 favourable 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.

### (1) Capital

A significant increase in the amount of capital invested in the Thai insurance industry should be encouraged. The benefits of this would be increases security for consumers and that more insurance risks in Thailand could be underwritten and retained within the country with reduced reliance on foreign reinsurers. 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 with a major overhaul effective end of 2019 (RBC2), are a welcome introduction to the Thai 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. Capital requirements that are generally more in line with a Solvency II regime to which many foreign insurance companies are subjected to on consolidated basis would create a level playing field and potentially ease the deployment of foreign capital into the Thai insurance market.

**Update:**

The decision of the OIC in 2020 to restore minimum solvency ratio requirements at a capital adequacy ratio (CAR) of 140% and terminate the temporary relaxation to 120% post introduction of RBC2 is a step in the right direction.

**(2) 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 in order to gradually move towards a principle-based “file and use” product environment with self-control by insurance companies with recognized strong product governance & control procedures. Given the importance of regulations in the insurance sector, a dialogue with the relevant government departments to improve these and other regulatory issues would be welcomed.

#### **Update:**

Happily, the product approval process has indeed been identified by the OIC has an area which may require improvement; this paper notes that a review process has been commenced.

### **(3) 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.

## D. 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.

**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. Amending existing intellectual property laws and practice to improve and streamline IPR registration procedures**

- 1.1 Comments on proposed amendments to the Thai Patent Act B.E. 2522
  - 1.1.1 Patent Opposition System
  - 1.1.2 Compulsory licensing
  - 1.1.3 Divisional Applications
- 1.2 Comments on Trademark Examination Practices
  - 1.2.1 Formality Objections
  - 1.2.2 Distinctiveness
  - 1.2.3 Fast Track Procedures
- 1.3 Geographical Indications

### **2. Improving IP protection framework and enforcement both online and offline**

- 2.1 Draft amendments to Thai Copyright Act
  - 2.1.1 Extension of the Term of Protection for Photographic Works
  - 2.1.2 Notice-and-Takedown System
  - 2.1.3 Intermediary Service Providers (ISPs) and Safe Harbours
  - 2.1.4 Fair Use
  - 2.1.5 Technological Protection Measures
- 2.2 Intellectual Property Infringements
  - 2.2.1 The Impact of COVID-19
  - 2.2.2 Counterfeit Goods: the case of cigarettes and alcohol
  - 2.2.3 IPR Infringement on Digital Platforms
    - 2.2.3.1 MOU on Cooperation for Suppression and Prevention of Online IPR Infringement
    - 2.2.3.2 Roles of Intermediary Service Providers

### 2.2.3.3 Holistic Approach to Tackle Counterfeiting

### 2.2.3.4 Relevance to IPRs of Malware/Ransomware attacks

## 3. Thailand Role as a Regional Hub for IP

### A. Amending Existing Intellectual Property Laws and Practice in order to Streamline Intellectual Property Rights Registration Procedures

European businesses, as long-standing partners and investors in Thailand, would like to reiterate that strengthening Thailand Intellectual Property system and regulations, in adherence to international standards, would create more favorable conditions for investment, attract FDI and transform Thailand into a knowledge-based economy driven by innovation and creativity.

Looking to the future, IPR-intensive industries in general, and SMEs innovating with new technologies in particular, can be expected to play a crucial role in Thailand post COVID-19 economic recovery and sustainable growth.

Ensuring that intellectual property rights (IPRs) can be swiftly registered is an essential condition to attract foreign investment and allow efficient protection of intellectual property since enforcement is dependent on IPRS being granted in line with international standards.

In this regard, current timeframe from filing of trademark or patent application to grant of a registration certificate is detrimental both to IP applicants unable to enforce their rights and to consumers victim of counterfeit and infringing products while IP applicants are waiting for timely registration of their IP rights.

In recent years, the Department of Intellectual Property (DIP) of the Ministry of Commerce has played a pivotal role in proposing amendments to existing intellectual property laws in particular with a view to streamline registration processes of IPRs.

In addition, the DIP recruited and trained more patent examiners, resulting in a better capacity to handle a fast-growing number of patent applications. The EABC appreciate DIP's efforts to curb down patent backlog and to streamline patent registration procedures as a top priority. The increase in the number of patent examiners is one of the key indicators showing that Thailand is gearing towards research-based and innovation-driven economy.

The EABC would like to encourage the Royal Thai government to accelerate the adoption of the proposed patent legislation in view of bringing Thailand in line with international practices, to promote innovation and attract foreign investment to the country.

The EABC would like to comment on proposed patent legislation and current trademark examination practice as follows:



## **(1) Comments on proposed amendments to the Thai Patent Act B.E. 2522**

With regards to the increase in the number of patent applications in recent years, the EABC views as urgent to reduce patent backlog and patent prosecution time.

As mentioned as well in detail in the Healthcare and Pharmaceuticals chapter of the present Position Paper, patent backlog is very negatively perceived by innovation companies who seek to obtain protection in Thailand. The EABC urges the Thai government to ensure that the objective of the amendments to the Thai Patent Act to streamline patent registration procedures and facilitate effective patent registration are effectively pursued.

### **(a) Patent Opposition System**

In this regard, the EABC views that the current legislative amendments should be aligned with post-grant opposition systems existing in the international context, in which the opposition process would occur only after the official grant of the patent application, in order not to create a situation where a patent application approved by the Department of Intellectual Property could in fact be “paused” until the opposition proceedings have ended.

When the opposition remains at the last step prior to the decision on patent approval, instead from the step of prior substantive examination, this pre-grant opposition could potentially create unnecessary delay in patent registration from its lengthy process in approval on patent request. It may also leave an open channel for competitors to take advantage from this method to defraud, submit

objections, to deliberately delay the applicant in getting a new patent.

For pre-grant opposition system, the applicant will not be entitled to the protection of the patent during the period under consideration process. Unlike the post-grant opposition system, the opposition will occur after patent granting as in alignment with international practice. It may be seen in countries with high levels of innovative product manufacturing, such as Japan (JPO), Korea (KIPO), the European Union (EPO) or the United States (USPTO), etc.

EABC would like to propose that the opposition should occur after the patent application is granted in alignment with international practices together with well-defined timeframe. This would truly support streamlining the patent registration procedures and facilitating the effective patent registration as the spirit of this law development.

In addition, we would like to propose that the decision for opposition should be based on three aspects according to international practices; which are Remaining of the patent granted, Revision of the claims (inside currently approved claims), Revocation of the patent.

### **(b) Compulsory licensing**

EABC observed the recent draft of Patent Act and would like to confirm our willingness to engage in the draft amendment process in order to achieve the best possible outcome, alignment with international standards and practices. Following are remaining concern regarding exercising of the compulsory licensing.

In Section 51, proposing to add the wording “non-commercial use” to clarify the purpose of public interest in compulsory licensing announcement in order to enhance clarification in respect to the spirit of this section development.

The Section 51/2 paragraph 1 additionally allowed Thai government in exemption to consult on permission of patent holder for compulsory licensing for export in the cases of emergencies in the importing countries or any other urgent circumstances or for the purpose of public interest, non-commercial use. Such a scenario is not permitted under the TRIPS Agreement and Doha Declaration Paragraph 6 framework, and we would like to propose removal the clause to align with international context.

More information on compulsory licensing can be found in the Healthcare and Pharmaceuticals chapter

### **(c) Divisional Applications**

Flexibility shall also be given to patent applicants to voluntarily file divisional applications so as to expedite grant of claims of their patents which do not face objection or opposition.

While the EABC welcomes the proposed amendments to allow patent applicant to apply for divisional application, in line with international practice, it remains unclear in current draft legislation, whether the filing of a divisional applications will be allowed more than once.

It remains unclear as well whether in case of opposition filed only against certain claims but not all claims of an otherwise approved patent application, the patent applicant may elect for the non-opposed claims to be approved in a divisional application.

## **(2) Comments on trademark examination practice**

### **(a) Formality Objections**

The examination timeframe for trademark applications is comprised between 12 to 18 months in average. This rather lengthy timeframe compared to other countries (China, Singapore, Europe, United States) is caused because of the significantly high number of formality objections raised by the Thai trademark office. Applications filed under the Madrid system have a very high rate of preliminary refusal, far exceeding the rate of other countries members to the international trademark registration system.

The EABC views that Thailand shall adopt a more flexible approach to product and service specification, in line with other trademark offices around the world who accept general headings of the Nice classification. There is often inconsistency among Thai trademark examiners resulting in trademark applicants having to amend their application despite earlier accepted applications with the same specification. The adaptation of new Trademark Guidelines in 2021 should hopefully improve current situation.

## **(b) Distinctiveness**

In addition, the number of trademarks being objected due to lack of distinctive character is comparatively high in Thailand compared to other countries. The EABC views that the Thai registrars should adopt a more flexible approach especially when the same trademark application has been accepted for registration in many other countries with a similar substantive examination system.

Reducing the number of excessive formality and substantive examination will undeniably allow for a speedier registration of trademark application and bring Thailand in line with international standards.

Appropriate training should be given in particular to trademark examiners to help them understand the difference between so called “suggestive marks” which shall be registrable and descriptive marks which should not be accepted for registration except under specific conditions such as for example distinctiveness by use of secondary meaning.

The EABC strongly hopes that the DIP will have broader views in considering distinctiveness of marks in order to allow Thailand to be grant protection to marks which are widely recognized as being distinctive in other countries. By failing to do so, Thailand creates opportunities for counterfeiters to enter the Thai market and sell counterfeit goods which in term deceive consumers and impact brand value.

## **(c) Fast Track Procedures**

In 2021, Thailand’s Department of Intellectual Property (DIP) has introduced ‘fast-track’ procedures to significantly expedite trademark renewals with a few specific requirements laid out in the DIP notification.

After the successful implementation of the fast-track renewal process, the DIP then turned its attention to the trademark application examination process and the issuance of initial office actions, launching the “First Action Fast Track” program on 16 April 2021. These new expedited practices are positive, brand-friendly steps from the DIP that are aligned with international benchmarks. The fast-track renewal – while a welcome improvement in itself – will also allow for smoother and more seamless trademark-related transactions. The fast-track examination procedures will provide faster initial examination of trademark applications and thus enable businesses to implement their IP strategies with fewer delays and obstacles. Together, these business-friendly developments from the DIP have the potential to boost trademark-related activities in the country to enhance Thailand’s competitiveness.

## **(3) Geographical Indications (GIs)**

The government through Ministry of Commerce also seeks to empower local communities with IP system by using for example geographical indications to promote livelihood and to stimulate value creation of local agricultural products and handicrafts. Thailand’s rich heritage of quality agricultural products is well protected

and Thai consumer will also be better protected from counterfeit food products. As of November 2021, 152 local products are registered as GIs in 77 provinces of Thailand according to the statistic from the Ministry of Commerce.

The provisions protecting geographical indications are very beneficial to owners of Geographical Indications since protection for GIs is possible under collective trademark protection and sui generis law. Stronger protection of genetics resources, traditional knowledge and traditional cultural expressions is another policy tool to enrich the IP natural ecosystem and promote rural development. We applaud the effort of the DIP for the amendment of GI Law which will take place in 2022.

## **B. Improving IP Protection Framework and Enforcement Both Online and Offline**

### **(1) Amendments to the Copyright Act B. E. 2537 (1994)**

Proposed amendments to the Thai Copyright Act have the objective to enhance copyright protection in digital environment, as well as to prepare Thailand for accession to the World Intellectual Property Organization (WIPO)'s treaties such as WIPO Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT).

On November 3, 2021, the draft amendment to the Thai Copyright was approved by House of Representatives and the new Act is expected to be enacted in 2022.

The new proposed Copyright Act includes the following topics:

#### **(a) Extension of the Term of Protection for Photographic Works:**

The EABC views such extension as a positive improvement bringing Thailand in line with international standards by extending the term of protection for photographic works to be the lifetime of the author plus 50 years after the death of the author.

#### **(b) Notice-and-Takedown System:**

Section 32/3 of the Copyright Act has proved to be ineffective in practice. It is good to hear that Thailand will adopt the notice-and-takedown system, which has been in existence for more than 20 years in several countries. This new measure will equip copyright owners with broader and more advanced tools to tackle copyright infringement in the new digital age.

#### **(c) Intermediary Service Providers (ISPs) and Safe Harbours**

The EABC values that the future Copyright Act will draw a clearer line of exemption from liability for ISPs which comply with the notice-and-takedown process; which are in substance mere intermediaries not involved with the infringement. ISPs may be mobile network operators, data centre operators or on-line marketplaces for example. The definition of each type of the ISPs is also better clarified. These changes are mainly in line with

global norms, although during the Parliamentary Committee process the exemption bar was lifted for most categories to make it harder to claim safe harbour (or exemption from responsibility for an IPR infringement).

EABC also has concerns regarding the application of such exemption from liability in practice. With the additional details to meet exemptions or safe harbour, cumulative conditions raise additional evidentiary issues and may be onerous for intermediary service providers (ISPs) in some cases. There have been industry comments to this effect. It appears that in proving the exemptions, the onus would be on the ISP.

One way to resolve this, as EABC has proposed, is a good faith, substantial compliance exemption for example in the event that even though not every element of an exemption is made out, the Court or relevant tribunal may take into consideration substantive, good faith compliance with the elements of an exemption such as to conclude that the ISP may have the benefit of the relevant exemption.

#### **(d) Fair Use:**

The EABC notes that Section 43/3, paragraph two requires the copyright owner to take fair use into consideration. The EABC is concerned that this requirement may result in consequences, i.e. further disputes in Court with regard to whether the copyright owner took the exceptions to infringement of copyright into consideration, before submitting the notice. If the copyright owner cannot provide convincing evidence to show that he/she had considered the exceptions to copyright infringement, would this have any effect with regard to the notice made?

What are the consequences of not complying with this requirement? In addition, this requirement may create a burden on some ISPs, as they would have to revise their existing notice-and-takedown systems for copyright owners to input statements to show that the copyright owner has already taken the exceptions to copyright infringement into consideration. We would recommend for the Thai Department of Intellectual Property to provide guidelines on this issue.

#### **(e) Technological Protection Measures (TPM):**

The EABC is pleased to see TPM specified in the Copyright Law as such improvement will close some existing loopholes by redefining the definition of TPM, imposing new liability grounds.

In conclusion, the EABC strongly believes that the new Copyright Act will be more beneficial to copyright owners in enforcing their rights in Thailand. However, attention is needed on ensuring that ISPs can claim safe harbour in good faith and we recommend the Thai Department of Intellectual Property to promote and provide extensive training for Thai ISPs regularly.

## **(2) Intellectual Property Infringement**

### **(a) The Impact of COVID-19**

The COVID-19 crisis undeniably created some unprecedented challenges for IPR owners. While some form of counterfeiting virtually disappeared such as for example counterfeit shops in touristic areas and open-air markets, counterfeiters were quick to adapt to the new environment and market their products online.

Trademark infringement certainly remained prevalent and clearly shifted online using social media and messenger applications to promote and sell directly to consumers. Instead of purchasing counterfeit products in shopping malls or markets, consumers are now able to order these products online and receive these directly at home making such new form of trade very difficult to intercept once the products have entered the Thai market. The multiplication of small parcels makes the fight against counterfeit products even more challenging since large seizures are becoming very difficult to be made.

Brands of pharmaceutical, chemical, cosmetic, food, electronic and luxury products, machines, spare parts, toys, furniture and even services (hospitality, transport, travel, financial services, insurance etc.) to cite a few examples are unfortunately still frequently copied. Trademark infringement causes economic losses to legitimate trademark owners, impacts their brands' reputation and poses health risks to consumers as fake products are usually produced without safety standards.

Trade in counterfeits is believed to have surged in Thailand during the COVID-19 pandemic, as consumers suffer an income loss from lockdown and other pandemic containment measures and as authorities need to focus their limited resources on immediate matters first. However, without sufficient and consistent law enforcement efforts, the problem may deteriorate and impact not only the brand owners' interest but also the government's tax revenue and the consumers' well-being and safety.

The counterfeits supplied to the sellers in Thailand are usually smuggled from abroad or manufactured locally, and in many cases organized syndicates or transnational criminals are involved. While, the Thai law enforcement agencies have regularly reported the seizures of counterfeits, further investigations that effectively lead to crackdown on the syndicates supplying the counterfeits nor driving criminal cases to successful prosecution applying all relevant laws remain rare.

Meanwhile, there are some big players selling counterfeit products along with other types of illegal goods. Their business activities are generally known in their geographies and among those in the impacted industries. These big players are known to have been in business for quite some time and has recently expanded their business to broader geographies and channels, causing bigger and wider impact on the government's tax revenue, country reputation, and legitimate business revenue as well as the well-being of the Thai people.

It should be noted that many counterfeits are related to product categories regulated by the Thai government regarding licensing, labelling, etc. Where authorities seized the counterfeits based on their non-compliance with the product regulations or on evading import duties, the authorities may not have notified the IP owner, in which case there would be no authentication of the seized goods to confirm IP infringement. This could be an issue because by law IP-infringing goods must be destroyed only, while illegal non-IP infringing goods may be disposed of in various ways.

## **(b) Counterfeit goods**

### **(i) Counterfeit Cigarettes**

Counterfeit cigarettes in the Thai plain packaging format has become more widespread in 2021. They are found in traditional-trade retail stores in various regions as well as on the digital platforms. Some retailers may not be aware that the products they carry were counterfeits. Moreover, in southern provinces like Songkhla, Pattalung and Satul, counterfeit cigarettes are normally available for sale along with illicit, non-taxed cigarettes that may not necessarily be counterfeit. As the government continued to increase cigarette taxes and tighten tobacco control regulations, these illicit cigarettes, including counterfeits, have gained more popularity.

### **(ii) Counterfeit Alcoholic Beverages**

Counterfeit alcohol is a longstanding issue in Thailand. High import tariff and excise which result in high retail prices of legal spirits or, on the other hand, high incentives offering to counterfeit network, domestic or transnational criminal syndicates, amid the weak law enforcement. is a major factor encouraging such crime.

Counterfeit alcohol has been made in two forms that are duty-free goods and tax-paid good to effectively delude consumers before distributing through traditional offline channel and digital platform. Not only counterfeit alcohol can cause harm to consumer health, but also seriously damage brands equity as well as bring about fiscal loss. The international independent research institute, Euromonitor, estimates value of counterfeit spirits in 2019 at 1,270.6 million baht resulting in government' tax revenue loss around 663.5 million baht.

Counterfeit alcohol and cigarettes are part of the overall illicit trade in alcohol and cigarettes. Sellers of illicit products normally carry both counterfeit products as well as genuine smuggled products. The counterfeit and illicit products can cause more harm to the health of consumers than the legal products, and do not contribute to the government's tax revenue.

We have observed a loss in government revenue collected from alcoholic beverages and tobacco due to the increasing trend in illicit trade in the past few years.

For alcohol, counterfeits have frequently been mixed in the shipment of smuggling goods. This not only causes risk to consumer health but also economic loss. The conservative value of annual government revenue is not less than 1.5 billion baht from just three leading imported spirits brands. In addition, it can be estimated that the Government loses at least 4 billion baht in tax revenue per year to illicit cigarettes.

European alcoholic beverages have suffered from illicit activities for decades (counterfeit and smuggling goods) as they are loved products by Thais and foreign tourists. A recent 'Study on Illicit Imported Spirits' conducted by Euromonitor International estimates that the illicit imported spirits trade costs the Thai Government around 2.8bn annually in revenue loss - 2.1billion baht to smuggling, and 0.7-billion-baht counterfeit.

The illicit trade in Thailand has become more worrying and the trend will continue in the recent years. We therefore urge that stronger law enforcement be undertaken to contain and suppress the problem.

The EABC noted the efforts of the DIP, together with Customs department and the department of Foreign trade (DFT) for the draft of notification on prohibition of export, import and transit of counterfeit goods and pirated goods secondary legislation pertaining to IPR enforcement at the border under the Export and Import of goods act B.E. 2522 (1979). The Business community is looking forward to the implementation in 2022.

Members of the EABC would be happy to co-operate with the Thai Government by sharing our anti-counterfeiting and anti-illicit trade experience as well as intelligence and technical information in order to strengthen the enforcement in Thailand.

### **(c) IPR Infringement on Digital Platforms**

The COVID-19 pandemic has accelerated the growth of commerce via digital platforms. These are not limited to only online marketplace platforms, but have fast expanded to social media and chat applications. Not only legitimate IP owners, but also sellers of IP-infringing goods, have increasingly utilized these channels to meet consumers' new normal lifestyle. The major online marketplace and social media platforms have implemented an IP protection channel on their respective platforms, where IP owners can file a notice for takedown of IP-infringing contents.

However, the takedown mechanism is more effective with public posts, but is rare with close chat groups or close online communities or chat applications for selling and buying illicit products including IP-infringing ones. These are also more difficult for law enforcement to detect or penetrate.

For more about Platforms, more information can be found in the Digital Economy/ICT chapter.

### **(d) MOU on Cooperation for Suppression and Prevention of Online IPR Infringement**

In January 2021, the Department of Intellectual Property (DIP) signed a memorandum of understanding (MoU) on protection of IPR on the internet with various brand owners, IP law firms, e-commerce platform owners, and also integrates collaboration with the Department of Business Development (DBD) and the Department of International Trade Promotion (DITP) which play vital roles in online trade promotion.

The MoU signifies the Thai government's recognition of the evolving trade in IP-infringing goods from once being mostly in physical channels to now widely being on digital platforms. The MoU provides a coordination platform to support online takedown or law enforcement actions. Under the MoU, the DIP also plays a very helpful role as an intermediary between the platform owners and IP owners, particularly in cases where the former is restricted by personal data privacy law.

EABC has been officially become signatory to the Memorandum of Understanding (MoU) on the Protection of IPR on the Internet on 16 April 2021. It has been our great pleasure to witness the enactment of the MoU, as the EABC has contributed to and engaged with the document during drafting process. We believe that the MoU will be effective in strengthening co-operation between stakeholders in the fight against intellectual property infringement on digital platforms. We are noted that the MoU will remain open for further signatory, therefore following are recommendation to enhance the MoU:



- i) Analyze in a holistic way the on-line intermediaries and what they can do to contribute to IPR objectives, and what each can and cannot do. EABCs recommends to bring in all and more types of ISPs to the discussion such as financial intermediaries
- ii) Following the good practices in Europe, the EABC supports the initiative of asking ISPs (in particular market places) to enter into MoUs that would allow for higher co-operation with IP enforcement authorities and IPR owners.
- iii) Establish a closer co-operation of IPR owners and private sector in general with newly established online IP infringement enforcements bodies such as the online infringement suppression division of the Thai Department of Intellectual Property and the Center of Operational Policing of Thailand Against Intellectual Property Violations and Crimes on the Internet Suppression (COPTICS)
- iv) Continue to build awareness education activities though business groups of how using unauthorized versions is economically unattractive and means anti-innovation.
- v) Adopt proactive measures to detect online infringement in order to prevent IP violation in the same pace with IP infringers.
- vi) EABC supports a better understanding of on-line governance and that the best model is MSM – Multi-Stakeholder. Like privacy and cybersecurity, IPR respect and protection is a matter of public policy and to be successful requires support and engagement by many stakeholder groups including responsible government agencies, IP rights holders, intermediaries and users
- vii) Digital Literacy / Digital skills: Vital as a start to an understanding of how to play a multi-stakeholder model role in the on-line world. Ability to use, create and share digital content safely and responsibly. It is an overarching concept for a wide range of skills
- viii) Technology competency, which is the use of digital technology;
- ix) Information literacy, which is the ability to locate, identify, retrieve, process and use digital information optimally; and
- x) 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.
- xi) 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.

See Digital Economy/ICT chapter for more on Digital Skills and Digital Literacy.

### **(e) Roles of Intermediary Service Providers**

All in all, as easy access to counterfeit products on online selling platform is damaging to IPR owners, the European business community would like to reinstate the importance of wider participation of online selling platforms and social Medias (such as Facebook, Instagram, LINE etc.) to enhance to effectiveness of the MoU. We trust that signing of this MOU is an important milestone in strengthening Thailand's IP protection and enforcement system which will help ensure appropriate environment for the growth of online trading.

We recommend an exploration of including financial service providers as ISPs which can play a role in preventing IPR infringement. Any regulation should be cognizant of consumer privacy issues and avoiding burdensome regulatory overhead for financial intermediaries; all parties need to be encouraged to play a role.

#### **(i) Holistic Approach to Tackle Counterfeiting**

Consistent law enforcement actions against sellers, producers, promoters and smugglers of IP-infringing goods are needed, particularly against the well-known long-time players. Where the goods are seized based on non-compliance with product regulations, the law enforcement officials should also consider contacting the IP owners for product authentication as appropriate. In addition, frequently official investigations should be done to identify the counterfeiting or IP-infringing syndicates supplying the IP-infringing products to Thailand.

Where the sales, production, or smuggling of IP-infringing goods could also be violation of product regulations, authorities should consider taking actions under such product regulation, and product authentication of IP law enforcement could follow, in order to ensure prompt actions against the suspected offenders. More investigations to identify the syndicates upstream should also be done for greater impact. Ways should be explored to improve the law enforcement against sellers IP-infringing goods on the close groups on social media or chat applications.

As post-raid action, criminal cases shall be driven to successful prosecution by taking into account all relevant laws i.e. landlord liability law, money laundering law,

trademark law, customs law, excise law, etc. to effectively prevent the criminals from repeated their crimes.

#### **(ii) Malware/Ransomware attacks**

Ransomware is the number one cybercrime event, manifest through various malicious actions such as hacking, denial of service, theft of data etc.

It causes a variety of harms, which include violation of Intellectual property rights. EABC has formulated an approach using a multi-stakeholder model and has discussed it in 2021 with DIP, National Cybersecurity Agency and a parliamentary committee. More details are in the Digital Economy/ICT Chapter.

### **C. Thailand role as regional hub for IP**

The EABC strongly supports the objective of Thailand to endorse the role of IP champion in the ASEAN region.

The ASEAN IP Rights Action Plan 2016-2025, identifies the strategic goals and initiatives that will contribute to the collective transformation of ASEAN into an innovative and competitive region through the use of IP.

In 2020, ASEAN Working Group on Intellectual Property Cooperation (AWGIPC) which comprises IP offices from the 10 ASEAN member states, embarked on a Mid Term Review (MTR) of the ASEAN IPR Action Plan 2016-2025. This MTR gave rise to the ASEAN IPR Action Plan 2016-2025 v2.0 which saw the addition of new deliverables, the dropping of some as well as amendments to the existing ones.

Additionally, Feasibility studies of ASEAN common IP System (e.g. feasibility study on setting up an ASEAN trade mark registration system) are undergoing and many Activities and initiatives have been carried out so far.

Toward these positive developments, EABC is in collaboration and contribute to the IP Key South-East Asia (SEA) project, funded by the European Union (EU) and implemented by the European Union Intellectual Property Office (EUIPO) aimed at supporting IP rights protection and enforcement across Southeast Asia.

A series of Activities were organized throughout the region, including Thailand, to improve and modernize the technical capacity of IP Offices, to exchange best practices, to contribute to achieving a high standard of protection and enforcement of IP and to provide a more level playing field for IP stakeholders.

In 2022, the EABC will officially become the representation of South-East Asia IP SME Helpdesk in Thailand, to support European Union small and medium sized enterprises in order to protect and enforce their Intellectual Property rights in or relating to South-East Asian countries, through the provision of free information and services.

## Rail and Road Infrastructure

### SUMMARY OF RECOMMENDATIONS

1. Special Envoy for Economic Recovery through Transport Infrastructure Investments.
2. Approvals from Ministry of Transport for Infrastructural Products and Systems.
3. Implement Know-How submitted by European Institutions and Countries.
4. Consider modern technologies in design and procurement, evaluate TOTEX.
5. Evaluation of Infrastructural Projects by International experienced Experts.
6. Realize benefits by liberalization and international co-operation.
7. Modernize Road Traffic Control.

### A. Special Envoy for Economic Recovery through Transport Infrastructure Investments.

The extensive plans of the Thai government to expand the roads and railroad lines are eminently suitable for revitalizing the economy. The financial resources invested here have a multiple effect. The contractors ensure an increase in the number of employees, but also with many suppliers and service providers. And the completed roads and railway lines reduce the costs and the time required for people and goods transport, which has a significant additional economic advantage. Rapid implementation is urgently needed in the current economic situation.

Only those funds that actually reach the contractors and suppliers develop the desired multiple promotional effect.

In fact, however, there are serious delays in almost all projects.

The reasons are, among others, bureaucratic obstacles, lack of provision of financial resources and legal restrictions for change in flexible response to difficulties. PPP projects need state protection for the risks that no one would have thought possible before the crisis. PPP contracts need to be inflation-adjusted and availability-based, attracting investors and guaranteeing sustainability in the long term.

#### Recommendations:

The cabinet shall appoint a special envoy - reporting to the cabinet - to ensure that the planned infrastructure investments are implemented more quickly. Existing obstacles must be identified, and necessary measures proposed to the cabinet.

## B. Approvals from Ministry of Transport for Infrastructural Products and Systems.

To this day, all products, processes, and systems that are used in an infrastructure project must be approved during the project period. This is done by the responsible officials, supported by consultants, after submitting extensive evidence. The procedure is completely out of date and brings disadvantages for everyone involved. It is very time-consuming and not fair since the conditions for the approvals and the duration for the processing are not fixed in the contracts. It is also not appropriate since the officials and consultants involved cannot have the actual state-of-the-arts know-how in all areas. The system also encourages corruption. In all modern industrial countries this procedure has been replaced by official approvals.

Appropriate specialist committees should be set up as soon as possible - the OTP would be a suitable agency. The EABC is prepared to support the necessary know-how through contacts with the relevant European Governmental offices.

The EABC will support to establish contacts with the relevant European offices in order to make know-how in this sector accessible.

### Recommendations:

The Ministry of Transport shall start issuing national Thai approvals for the transport infrastructure as industrialized nations do.

## C. Implement Know-How submitted by European Institutions and Countries.

Technology is evolving faster and faster. The technical specifications of the Transport Infrastructure Projects are sometimes decades behind!

The German Thai Railway Partnership (GTRP) in co-operation with the EABC was already highly successful in Know-How transfer with Working Groups and Seminars. Civil servants and consultants got free access to the latest Know-How. Now it is high time for the Ministry of Transport to instruct its Departments to put the knowledge gained into practice and to apply the Know-How in the Specs of the investments.

For the upcoming negotiations of the Thai-EU Free Trade Agreement, the mutual recognition of standards and technical approvals will be of great importance. So, it is time to act NOW!

### Recommendations:

For the benefit of reasonable investment costs, highest quality and optimal life cycle cost, European Standards and Technical Approvals need to be implemented, where the involvement of the Ministry of Industry and the TISI is urgently needed.

## D. Consider modern technologies in design and procurement, evaluate TOTEX.

For a long time now, Governmental Project managers have been well informed about the benefits and the necessity of Sustainability by Life Cycle Management, not

least through EABC consultations and seminars. Nevertheless, this is largely ignored in governmental projects. In contrast, Thai private investors have successfully integrated the Life Cycle Management

For Railway Projects is very urgent to introduce the International Standard IEC 62278 *Railway Applications Specification and Demonstration of Reliability, Availability, Maintainability and Safety* (RAMS) and to take it into consideration in the TOR's. This is an ISO standard from the International Standards Organisation, where Thailand is a member. The EABC published the contact details of European specialists who can accompany the introduction of this standard in Thailand.

What happens if these regulations, which have proven themselves internationally, are ignored in the major rail projects of long-distance transport? There will be a risk of purchasing low-quality products that have high operating and maintenance costs and a short life. Then, due to high costs of operation, e.g., for energy, only a small proportion of costs will be covered by the sale of tickets. This causes an unbelievably great financial burden on future generations, as the future budgets of the state will have to compensate for the resulting deficits.

The interoperability with the railroad systems of neighbouring countries will also be endangered, although connectivity is of importance due to the great geopolitical location of Thailand.

Modern sensor technologies allow huge savings, e.g. with adaptive maintenance systems.

In road projects and civil engineering, there is also considerable room for improvement. The construction costs are much too high in international comparison and 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.

Bridges, 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. Viaducts 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.

Authorities must prevent inappropriate poor-quality construction design and / or execution from being used in PPP projects that can result in huge long-term costs and operational restrictions in the long term.

If the evaluation of life cycle costs continues to be ignored this can become a political matter, ammunition for opposition parties.

#### **Recommendations:**

As in all industrialized countries, also in Thailand the total costs of investment TOTEX including capital spend CAPEX and operation and maintenance cost OPEX as well as the life span of the products must be considered when determining the best bidder.

## E. Evaluation of Infrastructural Projects by International experienced Experts.

We were pleased to note that Thai private rail operators are using state-of-the-art European technology, especially in the area of urban transport in Bangkok.

On the other hand, we see with great concern that, regarding the huge public investment projects in the transport sector, the technical developments of recent decades have been completely ignored. Sometimes, incredibly outdated technology is specified in tenders, very often obsolete or incorrect standards are used. It is high time the Thai government sets up a neutral consortium where external experts review and evaluate the proposed TORs. The external experts must have extensive experience in comparable projects in other countries and also provide evidence that they do not pursue any business interests in Thailand.

A negative example is the financing of a major project with a link that leaves the design in the hands of the financier - without a check on expediency being carried out. This is being abused to the detriment of Thailand. We watch that due to a lack of competition only products and systems of the financing state are used which are outdated and overpriced. For example, ignoring Thai climatic conditions, SRT shall pay for completely unnecessary antifreeze costs.

### Recommendations:

An improvement in transparency of the procurement processes appears to be urgently needed.

## F. Realize benefits by liberalization and international co-operation.

Many problems that are currently visible in the implementation of infrastructural investments could be tackled by the know-how of experienced international contractors and system suppliers. This is limited by the visa and work permit requirements and by legal restrictions that forbid certain professions for foreigners.

EABC suggests starting with a statutory exemption for European infrastructural experts with special types of visas and work permits under the “Smart Visa” project. To get the urgently needed state-of-the-art know-how for the huge infrastructural projects, NLA or NCPO shall give exemptions / waivers of the application of laws and regulations that prohibits foreign engineers from working in Thailand for the purposes of rail and road infrastructure projects.

Being the European Chamber of Commerce Thailand, EABC can initiate and support co-operation with European governmental rail or road operators.

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.

### Recommendations:

Liberalization will have remarkably high positive impact on the Thai economy in short and long term. Any economist can confirm that. Looking to any other nation, liberalization always was a success for growth and prosperity.

## G. Modernize Road Traffic

Urban traffic in most cities in Thailand, including Bangkok and Chiang Mai, is managed by simple countdown timer traffic controller, not considering traffic volume or special circumstances, like after-school or after-office hours. Modern traffic equipment like vehicle presence detectors, programmed traffic controllers and traffic management can significantly reduce traffic congestions.

With non-intelligent traffic lights, cars need to stop even when the other side of road has zero traffic. European Intelligent Traffic Solutions, recognizing many cars on the other side of the road, switch traffic lights, so the congested lane can flow.

The EABC refers to the positive experiences in Europe with holistic combinations of vehicle detectors, programmed-traffic controllers and an advanced traffic management system, a benefit for busy cities worldwide. Installing vehicle detectors before a junction gives the real-time input to the controller, whether to switch from red to green. The flow of the traffic does not depend only at one junction's situation but on many junctions before and around. Intelligent Traffic Solutions collect traffic data from a wide variety of sources, including accidents, weather forecast or events and process them to create a solid basis for implementing strategic measures which can be initiated manually or automatically. The system allows the integrated monitoring and control of different traffic zones such as city, urban highways, or even entire country networks.

Motorways and expressways in Thailand are used daily by commuters, as it would help them get to their destination in a shorter time. However, we often see the expressways, filled by standing cars. With a European Intelligent Traffic System, Thailand can optimize the traffic flow of roads, reduce the economic costs arising from traffic congestion and increase the safety of the drivers.

Funding for the conversion to electrical operation of vehicles, especially public transport such as buses and taxis or tuk-tuks, can now develop an economically unprecedented leverage effect. The same applies to expanding the network of charging stations. The state-owned companies in the energy sector should be obliged to get involved.

However, most electric energy generated in Thailand is based on fossil fuel. Going “electric” with replacement of existing cars with EVs or electrical rail transport will not resolve congestion and provide better quality of life; it is not automatically sustainable and will alone not create a modern mobility in terms of being seamless, connected and sustainable. The optimal measure that can be implemented quickly is therefore digital traffic recording and control.

### **Recommendations:**

Future is Digital! Now is the right time for the government to invest in advanced traffic management systems, and thus to provide a further impetus for the recovery of the economic situation.



# Small to Medium Enterprises (SMEs)

## SUMMARY OF RECOMMENDATIONS

### 1. What are SMEs

1.1 Definitions and profile show great dependency of the economy on SMEs. 99% in number of enterprises in the economy in both Thailand and Europe.

### 2. Problems facing SMEs

2.1 May be similar to those of larger companies but are more acute.

2.2 List of problems shows they are exacerbated by the pandemic

### 3. Addressing the challenges

3.1 Support innovation, R&D

3.2 Recognise foreign SMEs

3.3 Various measures to support access to finance

3.4 Learn from the pandemic

### 4. Regional context

4.1 EABC supports and welcomes inbound SME startups and investment, especially from Europe and is able to facilitate.

4.2 EABC encourages outbound expansion

4.3 ASEAN regional strategies can be supportive

### 5. Recommendations (10, four in this summary)

5.1 Internationalisation

5.2 Innovation, productivity

5.3 Funding Support including credit guarantee

5.4 Fast Track Regulatory Reform – remove the clutter

### 6. EABC

6.1 EABC is equipped to support SMEs via Working Groups, other forums, direct engagement and its networks

## A. The nature of SMEs; ‘foreign’ SMEs; what is an SME?

About fifty percent of EABCs members are SMEs. In Thailand, some 99% of all firms are SMEs<sup>1</sup> and in the EU, according to DG Grow<sup>2</sup> of the EC:

“Europe’s 25 million small and medium-sized enterprises (SMEs) are our focus. They represent over 99% of businesses in the EU. They employ two out of every three employees, create 85% of all new jobs and generate about three-fifth of the EU value-added. Tailor-made support to help them grow and innovate is essential. At all stages of development, small businesses struggle more than large enterprises to get finance. To stay competitive, both start-ups and scale-ups rely on external finance for innovation, digitalisation, internationalisation and upskilling”.

SMEs are a part of every EABC Working Group. Thus EABC does not operate a separate formal Working Group for SMEs. SME issues are regularly aired in Working Groups in EABC board meetings and through other EABC forums. This short Chapter covers some common SME topics.

Many of the challenges facing SMEs also face larger companies. The difference is that SMEs are generally not well equipped to handle major transformations or deal with administrative overhead in the ways that larger companies might be. Thus in recognizing the economic value of SMEs, special consideration needs to be given to supporting SMEs. Both the EU and Thailand recognize this, respectively, through DG Grow<sup>3</sup> in supporting the

internal market and DG Trade<sup>4</sup> in supporting the internationalization of SMEs, and in Thailand the Office of SME Promotion (OSMEP) and other agencies which have special promotions and support for SMEs.

There are varying definitions of what an SME is. For Thailand there is an official definition of MSME which relies on two sources.

The two sources are:

**Definition of MSMEs**

Type of Business	Micro and Small Enterprise				Medium Enterprise	
	Micro Enterprise		Small Enterprise			
	Annual Income (Million baht)	Employment (Person)	Annual Income (Million baht)	Employment (Person)	Annual Income (Million baht)	Employment (Person)
Manufacturing	≤ 1.8	≤ 5	≤ 100	≤ 50	≤ 500	≤ 200
Service and Merchandising	≤ 1.8	≤ 5	≤ 50	≤ 30	≤ 300	≤ 100

- Ministerial Regulation 2019<sup>5</sup>
- OSMEP Announcement 2020<sup>6</sup>

The definitions are important as the basis of policy and benefits. They draw a distinction between Manufacturing, and Service/Merchandising. They no longer rely on fixed assets. The OSMEP announcement covers micro enterprises.

A foreign SME is typically a company with greater than 49% foreign ownership. It may be a subsidiary or affiliate of a foreign company. It is very commonly one which has

<sup>4</sup> *Trade - European Commission (europa.eu)*

<sup>5</sup> [https://www.sme.go.th/upload/mod\\_download/download-20201014121830.pdf](https://www.sme.go.th/upload/mod_download/download-20201014121830.pdf)

<sup>6</sup> [https://www.sme.go.th/upload/mod\\_download/download-20201014121854.pdf](https://www.sme.go.th/upload/mod_download/download-20201014121854.pdf)

<sup>1</sup> *OECD from 2016: Thailand | Financing SMEs and Entrepreneurs 2020 : An OECD Scoreboard | OECD iLibrary (oecd-ilibrary.org)*

<sup>2</sup> *Access to finance for SMEs (europa.eu)*

<sup>3</sup> *Access to finance for SMEs (europa.eu)*

been launched in Thailand by a foreign national who may be resident in Thailand. Thus the SME sector evidences considerable entrepreneurship, a factor which should not be forgotten in considering innovation at an economy-wide level.

## B. Problems facing SMEs

SMEs face various major challenges and obstacles:

- Challenges for business continuity in the face of rules which the pandemic has shown to be difficult to implement; Downsizing and working fewer hours for survival involve cumbersome procedures.
- Lack of resources (financial, technology, HR/skilled labor, market access and market information)
- Lack of economies of scale and scope
- Very high regulatory overhead (eg with work permit and visa compliance); higher transaction costs relative to large enterprises
- Lack of networks that can contribute to lack of information, know-how, and experience with domestic and international markets
- Increased market competition and concentration from large multinational enterprises caused by globalization and economic integration
- Difficulties to compete against larger firms in terms of R&D expenditure and innovation (product, process, and organization)
- Lack of entrepreneurial experience, capacity, and know-how
- Launching overseas business

Several government agencies in Thailand seek to overcome these challenges. EABC can assist to access the necessary information and introduce a company to the right contact at these agencies and support that process.

## C. Addressing the challenges.

This part covers just some of key issues given the rapidly changing landscape as the economy moves from pandemic to endemic and how they might be addressed.

### (1) Innovation as a driver of economic recovery

Thailand's R&D expenditure as a percentage of GDP is low. An analysis by TDRI shows that direct funding of SMEs can lead to future innovation and success stories<sup>7</sup>.

EABC has long noted the need for greater support for R&D. Enhanced direct R&D support for SMEs is needed.

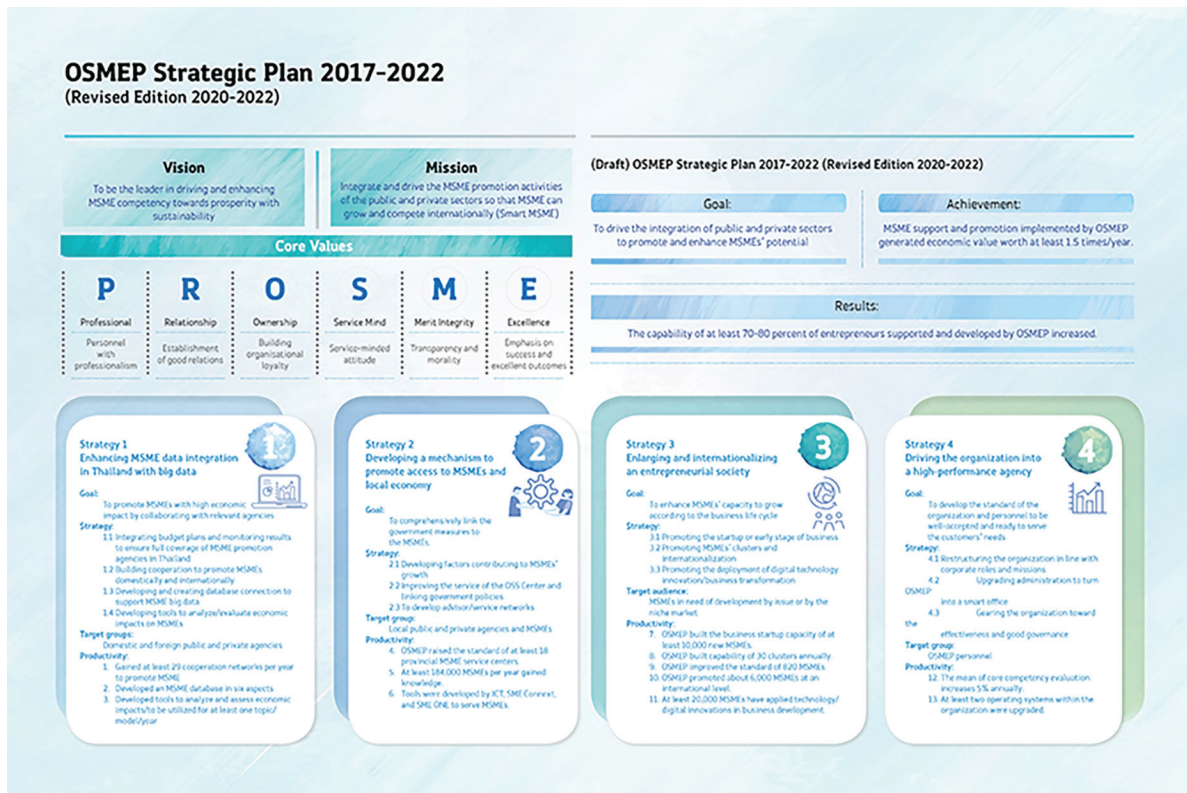
Thailand needs science, technology, and innovation to rescue its flagging economy. The government should take a leading role to drive R&D investment in all sectors and to support the private sector to create innovations, for SMEs in particular, to strengthen the backbone of the economy for a post-pandemic recovery<sup>8</sup>.

The government concept of 'Smart SMEs' which are better equipped may be attractive. However the real policy support needs to be effective so that 'smart' is not just a soundbite but coupled with the skills in SMEs can result in a stronger and more innovative sector.

<sup>7</sup> *Innovation is key to economic recovery - TDRI: Thailand Development Research Institute*

<sup>8</sup> [www.tdri.or.th/en](http://www.tdri.or.th/en) see under 'Innovation is Key to Economic Recovery'

OSMEP has a strategic plan which reflects many of the aspirations in this Chapter<sup>9</sup>.



## (2) Foreign SMEs need recognition

As long as the business is established and operating in Thailand, EABC considers that benefits available to 'local' SMEs should be available to all SMEs and foreign shareholding (which is permitted in various ways under Thai law) should not be a barrier. Foreign SMEs contribute to jobs, innovation and state revenues just as majority Thai-owned SMEs do. Thus 'national treatment' is the recommended standard.

<sup>9</sup> Source: OSMEP

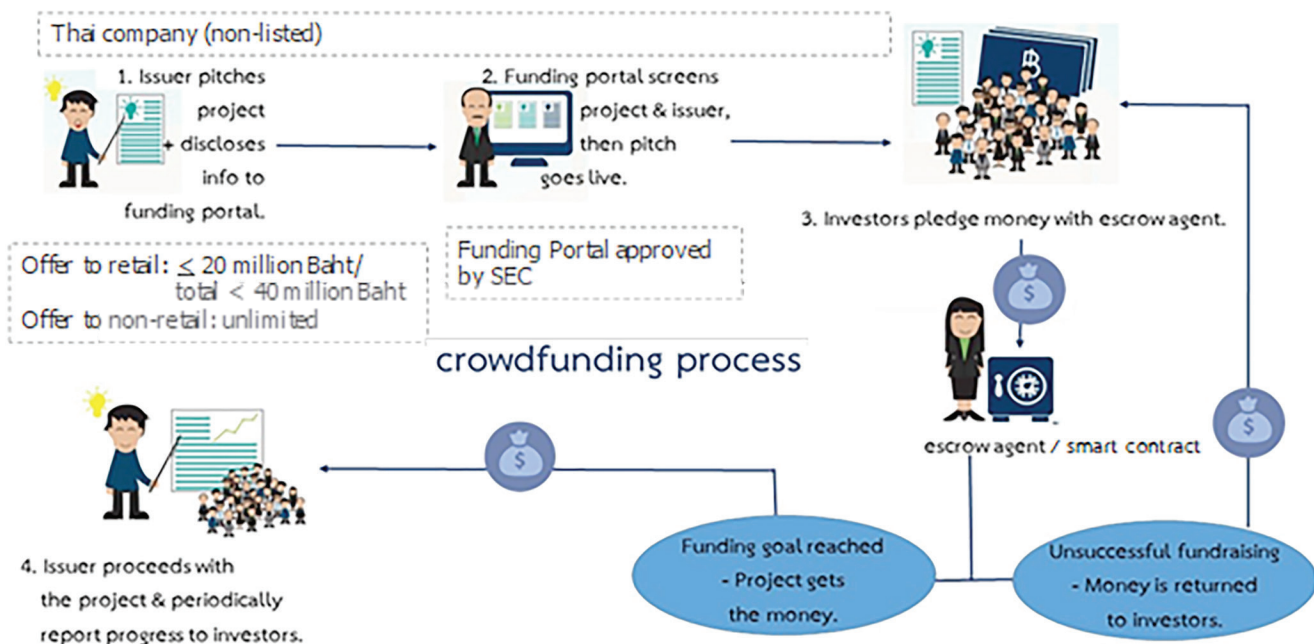
### (3) Access to finance

One of the main objectives is to provide enhanced access to finance for SMEs in different phases of their lifecycle. A recognized issue for SMEs is the difficulty in obtaining finance.

Apart from EU programmes which , some measures have been taken in Thailand to overcome this issue:

- i) Legislation to support the use of various assets as collateral
- ii) Debt and Equity Crowd Funding – see table below
- iii) Peer to Peer lending – see table below
- iv) Soft loans for pandemic recovery.

### Crowdfunding Process



**Crowdfunding process.** Source: Securities and Exchange Commission (Thailand) 2019

**Summary of key points of regulations of Crowdfunding and Peer to Peer lending.** Source: EABC from the regulations and analyses

	<b>Crowd Funding (CF)</b>	<b>Peer-to-Peer lending (P2P)</b>
<b>Regulator</b>	Securities and Exchange Commission (SEC) Capital Markets Supervisory Board (CMSB is part of SEC),	Bank of Thailand (BoT)
<b>Regulatory References</b>	SEC Notification Tor Jor. 21/2562 'Re: The Offering of Securities for Sale through Crowdfunding Portals' – in force May 16, 2019. Covers 'plain vanilla' debentures as well as shares – ie covers equity and debt CF.	Notification 4/2562 issued by BoT 'Re: The Determination of Rules, Procedures, and Conditions for Peer-to-Peer Lending Businesses and Platforms' – effective 30 April 2019.
<b>Base requirements</b>	Various obligations apply to Portals, Investors, Issuers. Crowd funding portals can be manifest in websites, mobile phones. Inc in TH; min paid up 5m. KYC compliance. Issuers: cannot be SET listed, inc under TH law, use of proceeds: company's operations, or refinancing. Issuer offers the securities on the portal. Issuers restricted to one portal except with SEC approval.	P2P Platform provider: company inc in TH; not an FI (bank or NBF), private. Paid up 5m; 75% shares held by Thais. Platform provider cannot be Custodian. Must be authorized custodians under SEC regulations, or BoT- authorized banks for escrow accounts.
<b>Limits</b>	Investors: Non-retail: net assets 50m, or income 4m p.a., experience. Limited to 50 angel investors/ crowdfunding portals in 12 month period Retail: CF securities offered to a retail investor limited to 10,000 to each retail investor. Each issuer limited to 20m within 12 mos of first offering; capped at 40m at any time.	Lenders (can be natural or juristic persons): 500,000 p.a. (some type of institutions exempt from limits) Borrower (must be natural person): For business purposes max 50m where collateralized For personal purposes: 1.5x monthly income if under 30,000 / month, or if over 30,000, 5x.

The table illustrates most but not all of the rules and features. The rules are crafted to encourage and attract specific kinds of interests and to target gaps. The regulations have evolved. Some additional flexibility would be warranted which could allow different targets based on different business plans, rather than making the effort ‘unsuccessful’ just because it did not reach the one original target.

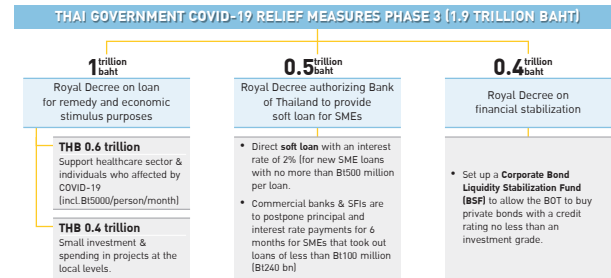
#### (4) Government measure for economic support – 2020 and 2021; to 2022

It is worth considering how the government responded for SME support in 2020 and 2021, and looking to 2022.

##### (a) 2020

The Cabinet approved a fiscal package with phases I, II, and III amounting to at least 9.6 percent of GDP or THB 1.5 trillion including: health-related spending, assistance for workers, farmers, and entrepreneurs affected by Covid-19, for individuals and businesses through soft loans and tax relief, lower water and electricity bills, and social security contributions, and support local tourism with THB 22 billion in subsidies for tourists and THB 100 billion in soft loans for SMEs in the sector. From July 15, 2020 to January 31, 2021, there was also a domestic tourism subsidy package, “We Travel Together,” covering up to 40 percent of certain travel costs for up to 5 million domestic tourists<sup>10</sup>. Graphics by TDRI:

<sup>10</sup> <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19#T>  
[https://www.bot.or.th/English/MonetaryPolicy/MonetPolicyCommittee/MPR/BOX\\_MRP/BOX1\\_MPRMarch2021/MeasuresCOVID19.pdf](https://www.bot.or.th/English/MonetaryPolicy/MonetPolicyCommittee/MPR/BOX_MRP/BOX1_MPRMarch2021/MeasuresCOVID19.pdf)



The Bank of Thailand (BOT) provided a soft loan with an interest rate of 2% for SMEs having less than 500 million baht of an outstanding credit balance, not listed on the SET and not an NPL (Non Performing Loan) as of 31 December 2019. SMEs were to receive additional credits of not more than 20 percent of the original loan at the rate of interest, not more than 2 percent per annum.

The BOT relaxed some regulations from January 1, 2020 to December 31, 2021 regarding classification of borrowers and levels of loan loss provision so that financial institutions could accelerate debt restructuring. Borrowers not yet classified as NPL or even those classified as NPL borrowers because of COVID-19 impacts can be immediately classified as normal if they could make repayments in accordance with a debt restructuring agreement, which would not considered be a Troubled Debt Restructuring (TDR).

##### (b) 2021

In January 2021, the government unveiled a series of measures including a \$7 billion in cash handouts to individuals, to counter the second wave of the outbreak. Under the plan, each beneficiary will receive THB 3,500 per month for two months. To counter the third wave,

the government in principle approved disbursements of up to 3,000 baht per person for 31 million eligible citizens from July to December. The government also approved a new economic stimulus package worth 140 billion baht (4.5 billion USD) consisting of cash handouts, co-payments and e-vouchers.

In March 2021, the Bank of Thailand (BOT) announced soft loans and asset warehousing measures which took effect by May 2021. It extended soft loan facility for businesses totaling 250 billion baht to support small and medium enterprises affected by the COVID-19 crisis. The measure aimed to address limitations of the 2020 soft loan measure. The loan facility was supported by a credit guarantee scheme through the Thai Credit Guarantee Corporation and receive additional exemptions or reductions on relevant taxes and fees. In addition, it offered debt restructuring through Asset Warehousing with Buy-Back options totaling 100 billion baht providing standardized debt restructuring program for borrowers whose businesses require prolonged recovery period. The business will have the first rights to repurchase their collaterals at the agreed transferred price plus an additional carry cost at 1 percent per annum as well as incurred asset maintenance costs and other relevant fees<sup>11</sup>.

### NEW SOFT LOAN CRITERIA PROGRESS - from mid May 2021

250 billion baht of 350 billion baht had been allocated for business rehabilitation and published in the Royal Gazette on 10th April. On 19th April, Bank of Thailand announced to release the 1st round of 150 billion baht to commercial

<sup>11</sup> [https://www.bot.or.th/Thai/AboutBOT/Activities/Documents/230364\\_Jointstatement.pdf](https://www.bot.or.th/Thai/AboutBOT/Activities/Documents/230364_Jointstatement.pdf)

banks as promissory notes. As of 10th May, 8.2 billion baht loan under the new criteria was approved which covered 4,454 companies. 32.6% are SMEs with credit line between 5 - 50 million baht, 64.3% are MSMEs with credit line less than 5 million baht, and 3.1% corporate with credit line between 50 – 500 million baht. There is no evidence shown that the new bank client had been approved under the new criteria.

### Mid-June 2021

#### NEW SOFT LOAN CRITERIA PROGRESS

Bank of Thailand indicated that the internal process of the bank is slower than the projection for the first phase due to the readiness of banks' internal operation and their staff. BOT urges the banks to improve the internal process and people.

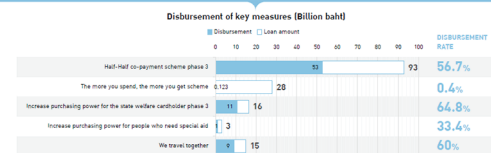
Description	As of 10 <sup>th</sup> May	As of 24 <sup>th</sup> May
Loan approved under new criteria	8.2 billion baht	15.8 billion baht
Coverage	4,454 companies	6,611 companies
SMEs 5 – 50 million baht credit	32.6%	42%
MSMEs < 5 million baht credit	64.3%	13.2%
Corporate 50 – 500 million baht credit	3.1%	43.8%
New client		1%

By year end there was excess capacity and the opportunity to review .

### (c) 2022

TDRI have noted the likely focus of support.<sup>12</sup>

### TDRI·EIS GOVERNMENT WILL CONTINUE TO FOCUS ON STIMULATING CONSUMPTION IN 2022



#### Upcoming Entrepreneur Assistance Program to promote and maintain employment

- **GOAL:** Help maintain employment in 394,621 small & medium enterprises with 4,034,590 Thai employees.
- **ASSISTANCE:** Provide financial assistance to employers registered in the Social Security System in the amount of ฿3,000 per Thai employee per month (not exceeding 200 employees) for a period of 3 months (Nov 2021 – Jan 2022).
- **CONDITION:** Employer must maintain 95% of the employment it has when entering the program.
- **ESTIMATED BUDGET:** ฿136 billion

<sup>12</sup> TDRI 6 Jan 2022



## D. ASEAN context

The Strategic Action Plan for SME Development (SAP SMED) was launched by ASEAN in late 2015. With significant contribution from OSMEP (Thailand), these desired outcomes continue to reflect policy objectives. A mid term review was done in 2020.<sup>13</sup>

### SAP SMED Goals and Outcomes



<sup>13</sup> <https://asean.org/book/mid-term-review-of-the-asean-strategic-action-plan-for-sme-development-2016-2025/>

## E. Recommendations

EABC offers a number of suggestions about enhancing SMEs.

### (1) Internationalisation

EABC welcomes European SMEs in the Thai market. As referred to earlier in this chapter, there are EU schemes which support internationalization of SMEs. EABC also encourages entrepreneurship and local SMEs venturing to Europe, other parts of the region of the world.

BOI implemented a new focus for supporting out-bound investment.

### (2) R&D, Innovation & Productivity - Grants and Tax Incentives

Please see earlier in this Chapter about R&D and innovation. 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 which 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 could encourage exchange of innovative ideas with universities and research institutes in Thailand. This could be done through student or faculty partnerships which would help the companies as well as the universities to research for the real economy sector.

#### **(4) Development of credit guarantee schemes**

Experience with the pandemic has shown that funding support is challenging. The Credit Guarantee Scheme (CGS) 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 easier, 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 or enhancing such a scheme.

#### **(5) Lessons from business growth**

While businesses have closed or reorganized, those surviving are yet as at January 2022 to recover to their pre-COVID levels, there are businesses that have grown during the pandemic. They include digital and related

business such as e-commerce, delivery and packaging services, IT solutions, cyber-security services, healthcare and hygiene products and insurance. Automotive and electronics. Lessons from pitfalls along the way should be noted.

#### **(6) Utilising Information for SMEs**

In order to inform about new methods of e-business, provide market information and economic updates, public data including anonymised big data is available. Chambers of Commerce are able to provide close mentoring support to SMEs and small enterprises.

EABC Working Groups and the EABC network are able to:

- Coordinate business advice and business relationships
- Offer support in organizing seminars and other events on important topics for particular problems of SMEs
- Introduce supporting organizations to SME companies that can help them with certain operational functions

#### **(7) Fast Track Regulatory Reform / Guillotine / Doing Business Easily**

One of the largest obstacles for SMEs in Thailand are cumbersome procedures in Work Permit & Visa, and some areas of customs (which is seeing improvement. Reducing and simplifying such procedures and practices reduces overhead which is not just a cost issue but an issue of avoiding non productive distraction. It will usually boosts trade.

See more in the Cross Functional Issues chapter and the Transport & Logistics chapter.

### **(8) Services sector liberalization and lifting restrictions on certain professions.**

Business flexibility is important for SMEs. The economy could use new innovation in many service areas. Please see CSI chapter.

### **(9) Protection of Intellectual Property Rights**

IPR plays a key role in development of new technologies and innovations. SMEs are in the forefront in these developments. If their IPR rights are protected and enforceable, SMEs are willing to invest. With the aim of the Thai Government to become an innovation driven economy, EABC suggest improvements in its IPR regime including the execution and reduction of the backlog of pending patents and allow for better protection of other IPRs including Copyright, Trade Marks and Geographical Indicators (GI). Please see the IPR Chapter for more.

### **(10) Employment ratio / paid up capital**

Amongst the various work permit and visa issues are these (see CSI Chapter). EABC recommends removing the 4:1 ratio (or removing it but by exception for certain industries, reducing it to 1:1) and ceasing the paid up capital requirement of THB 2m per foreign employee. As at January 2022 there have seen some progress on these points.

## **F. What EABC does**

To support the above mentioned points, the EABC does actively assist SMEs in several ways, as follows:

- Digest and embrace SME members' experience, gather & report on obstacles, barriers
- Dialogue and close collaboration with relevant government agencies), engage in dialogue with recommendations to improve the business environment for SMEs
- Facilitate access to Finance, support from banking sector,
- Promote training, collaboration, organize seminars and other activities with other Working Groups and chambers of commerce
- Monitor and evaluate implementation of supportive programs
- Encourage entrepreneurship, assist with transition to digitalisation to increase SME competitiveness
- Promote development of business relations between European and Thai SMEs
- Promote diversity; critical thinking for effective governance, problem solving and good business
- Further advocate for Fast Track Regulatory Reform with regard to Permits, Licenses, Labor laws & Labor Market efficiency

# Tourism

## SUMMARY OF RECOMMENDATIONS

### 1. Concept of the tourism industry

- 1.1. In pre-pandemic Thailand, the industry made up almost 20% of GDP. A common belief is that Thailand must regain leadership in tourism but it needs to be greener. The pandemic has gutted skills and organisational learning; reskilling is essential.

### 2. Thailand as an attractive destination for Tourism

- 2.1. a wider view about hospitality-led recovery – which includes domestic and international tourism and even in-town spend is essential for economic recovery of Thailand.

### 3. Significance of Tourism to Thai Economy

- 3.1. The tourism industry has been seen as a tool for “Solving poverty” and “raising the economy of country” as it involve various dimensions which included formal and informal sectors.

### 4. Pandemic impact on tourism; Tourism as key toward sustainable economic recovery

- 4.1. Impacts on Tour operators: allowing foreign tour facilitators is to enhance the tourist experience by having a person with some local knowledge and speaking the same language and appreciating the culture of the foreign tourists in that group.

### 5. Sustainable Tourism

- 5.1. With increasing tourist numbers there is a need to protect and promote the sustainability of Thailand along green line in order to pave the Way for a More Sustainable & Inclusive Future, reflects the increasing focus on ensuring the industry’s sustained growth.
- 5.2. EABC continues to work with JFCCT for commendable development towards more sustainable tourism in accordance with the CAP (Care About Plastics) Project and beyond.

### 6. Digitalisation

- 6.1. PDPA, eCommerce Tax, Digital Platforms Governance Decree and Immigration Administration and features are backbone to the digitalization and improvement of tourist experience.
- 6.2. Digital government solutions for visas, visa-free entry and paperless arrival are also needed.
- 6.3. Social media and influence marketing: EABC encourages truth in advertising. Over promotion will only disappoint.
- 6.4. Platform booking bias needs rationalization.

## 7. Fair price competition in the hotel industry & Transportation

7.1. EABC recommends solution stricter implementation of existing regulation plus the creation for better and clearer rules and regulations for non hotels. 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.

## 8. Luxury Goods

8.1. EABC recommends that this import duty rate be reduced significantly as soon as possible.

## 9. Aviation

9.1. It is in our common interest to promote the urgency of swift action to further liberalize the air travel industry. Pursuing a Single Aviation Market is recommended.

9.2. General aviation needs much greater support to attract greater use.

## 10. Future of Tourism in Thailand

10.1. Reskilling is essential in order to deliver on expectations, and for economic recover. It needs a workable and manageable curriculum plan.

10.2. The Thai economy relies heavily on tourism, so its recovery will drive economic revival. Therefore, a review and update of the Strategic framework for Ministry of Tourism with comprehensive requirements is paramount. A greener industry is expected.

10.3 Safety & Security in Tourism needs further development in order to support attractiveness and economic recovery.

## A. Concept of the tourism industry

Tourism can be defined as *“a collection of activities, services and industries which deliver a travel experience comprising transportation, accommodation, eating and drinking establishments, retail shops, entertainment businesses and other hospitality services provided for individuals or groups traveling away from home”*<sup>1</sup> according to the World Tourism Organization (UNWTO); the United Nations agency responsible for the promotion of responsible, sustainable and universally accessible tourism.

<sup>1</sup> <https://www.unwto.org/glossary-tourism-terms>

Travel & tourism and its enabling ecosystem have proven to be significant drivers of economic growth, contributing over 10% to global GDP and accounting for 1 in 10 jobs on the planet. The industry continues to be a force for good, providing unique opportunities for developing and emerging nations to move up the value chain. In pre-pandemic Thailand, the industry made up almost 20% of GDP. A common belief is that Thailand must regain leadership in tourism but it needs to be greener. Further the pandemic has gutted skills and organisational learning; reskilling is essential. This chapter covers these concepts.

## B. Why Thailand is attractive for Tourism

### (1) Foreign Perception towards Thai tourism

The perception of foreign tourists when selecting Thailand as their tourist attractions is based on the previous brand image of Thailand. Visitors always know Thailand from word of mouth and expect a positive attitude when dealing with Thais. The friendliness of local people is always possible to gain bigger market share and to promote tourism in Thailand.

Thailand has long ascribed to this point of view; and it has devised a tourism marketing approach which encourages low-, medium-, and high-cost mass tourism to nearly all regions of the country. With the ubiquitous “Land of Smiles” advertising slogan promoted around the world, Thailand has become one of the best known, and most sought after, international tourist destinations.

In 2019, the Global Destination Cities Index—which ranks 200 cities based on proprietary analysis of publicly available visitor volume and spend data—reveals that Bangkok remains the No. 1 destination, with more than 22 million international overnight visitors, and become the world’s most visited city for four consecutive years before a ban on international travel. When looking at the cities by dollar spent, Bangkok remains the third rank following Dubai and Makkah.

### (2) Food / Gastronomic / Culinary tourism

‘Gastronomy’ is defined as the art of eating and drinking in many sources and ‘Gastronomic Tourism’ generally refers to the originality of a dish and its being indigenous

to a place, a region or a country, covers the main areas of indigenous dishes and wine tourism. Gastronomic Tourism includes visiting food producers, eating festivals, restaurants and special places related to some special foods together with tasting a special dish, observing its production and preparation processes or eating a special dish from the hands of a very famous chef as well as seeing how a certain dish is being prepared.<sup>2</sup>

Thai cuisine has an international reputation. We therefore applaud the continuous effort of Thai government to promote Gastronomy tourism. In early December 2021, Cabinet approved the Tourism Authority of Thailand’s (TAT) proposal to allocate a budget of \$4.1 million (THB135.5 million) to support the Michelin Guide Thailand 2022-2026 project.

In addition, a wider view about hospitality-led recovery – which includes domestic and international tourism and even in-town spend is essential for economic recovery of Thailand.

Gastronomy experiences must combine with food and beverages. Premium alcohol is consistent with higher spending tourists. Partnering that with food therefore brings together two strengths – Thailand as a gastro centre and meeting a plan for higher end tourists the higher spending tourists, gastro-hospitality are certainly ideals. These products do not contribute to alcohol abuse and alcoholism. Thus promoting fine gastro experiences and allowing premium alcohol products to be served at all reasonable times will support tourism recovery.

<sup>2</sup> Source: TAT, 2018

[https://amazingthailand.com.au/wp-content/uploads/2018/12/20181022\\_HELLOTASTE\\_Ebook\\_10mb.pdf](https://amazingthailand.com.au/wp-content/uploads/2018/12/20181022_HELLOTASTE_Ebook_10mb.pdf)

Evidence shows that memorable food and beverage experiences – that ‘Instagrammable’ sunset cocktail at a beach bar – will be a key driver in shaping tourists’ decision on which countries to visit, and how much money to spend. For the Government to achieve its economic goals it is important to enhance this tourist experience, especially in tourism provinces.

### (3) Wellness & Medical Tourism

Thailand began promoting medical tourism in 2004 with a detailed medical tourism website that highlights many of the most popular treatments available, including dental work, dermatology and cosmetic surgery, as well as listing reputed hospitals, making it easy for potential visitors to decide on a procedure.<sup>3</sup> Part of Thailand’s medical tourism success is due to its wider popularity as a holiday destination.

Thailand along with its Asian neighbours, Singapore and India, account for close to 90% of Asia’s medical tourism market which is growing at a yearly rate of 16%.

The International Healthcare Research Center’s Medical Tourism Industry Index for 2020-2021 ranked Thailand as an attractive destination for Medical Tourism well above the average at 5th out of 46 countries.<sup>4</sup> The ranking was based on the quality of Thailand’s medical services and the efforts it has made in gaining international accreditation for its hospitals and developing the quality of its medical staff. In terms of quality and services, Thailand is ranked 18th in the index, from a total of 41 countries. Overall,

<sup>3</sup> <https://www.tica.or.th/why-thailand-categories/medical-tourism>

<sup>4</sup> Thailand | Global Healthcare Destination ([medicaltourism.com](http://medicaltourism.com))

the index indicates that Thailand is well on the path to establishing itself as a globally attractive medical tourism destination.

### C. Significance of Tourism to Thai Economy

The tourism industry has been seen as a tool for “Solving poverty” and “raising the economy of country” as it involve various dimensions which included formal and informal sectors.

According to the World Bank, Thailand export of goods accounted for 54 percent of GDP in 2020, with tourism contributed to 8.4 percent of GDP. Thailand received close to 40 million foreign tourists in 2019, and international tourism receipts totalled THB 1.9 trillion (11.3 percent of GDP). 2020 arrivals of 6.7m were almost all in Q1, and for 2021, the estimate is 0.3m. (Source: Bank of Thailand 2021; TDRI 6 Jan 2022)<sup>5</sup>

<sup>5</sup> [https://www.bot.or.th/English/MonetaryPolicy/MonetPolicyCommittee/MPR/BOX\\_MRP/BOX2\\_MPRMarch2021\\_ForeignTourist.pdf](https://www.bot.or.th/English/MonetaryPolicy/MonetPolicyCommittee/MPR/BOX_MRP/BOX2_MPRMarch2021_ForeignTourist.pdf); TDRI – presentation at ISEAS ROF 6 Jan 2022

Country	GDP Contribution		Decline in GDP Contribution	Employment Contribution		Decline in Employment Contribution	Decline in visitor spending (USD) 2019>2020	
	2019	2020	2019>2020	2019	2020	2019>2020	International	Domestic
Thailand	20.1%	8.4%	- 60.8%	21.4%	18.1%	-15.1%	-76.5% (- 8.3 BN)	-28% (-7.6BN)

Source: TEM (WB) July 2021, WTTC 2021

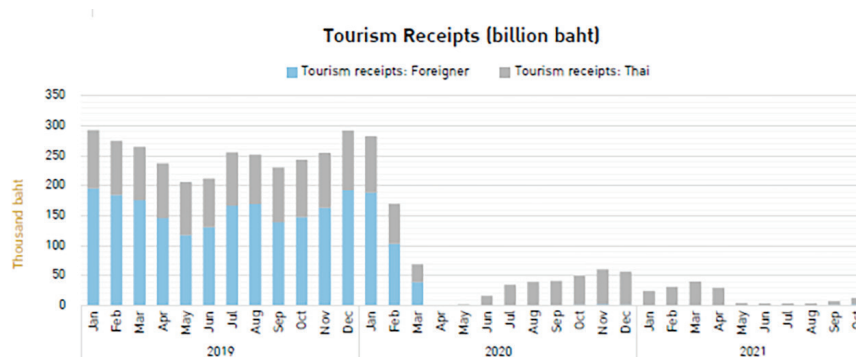
Meanwhile, income from domestic tourists amounted to THB 1.1 trillion (6.4 percent of GDP) in 2019. The three tourism-related sectors—hotels and restaurants, wholesale and retail trade, and transportation and communications—together employed more than 10 million workers, contributing 26 percent to total employment. (Source: World Bank TEM July 2021, SCB EIC)

Number of Foreign Tourist Arrivals (1,000 Persons)

	2019p	2020p 1	2020p1				2021p1
			Q1	Q2	Q3	Q4	Q1
East-Asian	27,260	3,739	3,735	-	-	4.3	5.2
European	6,719	2,079	2,075	-	-	4.4	9.9
Others	5,818	884	882	-	-	2.1	5.1
<b>Total</b>	<b>39,797</b>	<b>6,702</b>	<b>6,692</b>	<b>-</b>	<b>-</b>	<b>10.8</b>	<b>20.2</b>
Growth Rate (%YoY)	4.2	-83.2	-38.0	-100.0	-100.0	-99.9	-99.7

Source: Department of Tourism, Ministry of Tourism and Sports

Source: Gross Domestic Product: Q1/2021 report, NESDC



Source: Ministry of tourism and sports and Tourism Authority of Thailand

6

Source: TDRI 6 Jan 2022.



According to December 2021 Thailand Economic Monitor report by the World Bank, the number of international tourists is projected to pick up to just under 7 million in 2022, with a sharp rise in the second half of the year and increase further in 2023 to around 20 million arrivals, or about half of the 2019 level. Tourism is expected to contribute 2 percentage points to the growth rate in 2022 and 4 percent in 2023.<sup>6</sup>

While the Bank of Thailand's Monetary Policy Committee announced in December 2021 that the foreign tourist arrival outlook for 2022 expected to be 5.6 million, in line with the central bank's existing assessment regarding downside risks for tourism amid higher uncertainties for a pandemic outbreak.

## **D. Pandemic impact on tourism; Tourism as key toward sustainable economic recovery**

Asia-Pacific was the worst performing region, with the sector's contribution to GDP dropping a damaging 53.7%, compared to the global fall of 49.1%. According to UNCTAD, Thailand is one of the most heavily affected countries and lost an estimated US\$47 billion in GDP for 2020 due to the contraction in tourism.

### **(1) Job and Revenue Loss in Tourism Industry**

According to National Institute of Development Administration (NIDA), Employment in Tourism industry in Thailand accounts for more than 3 million jobs in Thai market. Thailand has lost about 1.45 million tourism jobs during the coronavirus pandemic. Skilled workers in the tourism sector have been heavily impacted.

<sup>6</sup> <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/099505112112129099/p1774810eff81c0030b22f0874a695a491d>  
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### **(2) Impacts on Tour operators**

According to the Department of Tourism (in Ministry of Tourism and Sports), in July 2021, there were 9,729 tour operators operating in Thailand which; lower than the previous month. Many tour operators have decided to suspend their business or ceased business due to the border control and economic

stagnation as a result of Covid-19 pandemic. For tour guides, there are 68,443 tour guides reported in July 2021 which almost half of professionals in the industry are normally working for the tours abroad which are restricted since the outbreak of Covid-19.<sup>7</sup>

Tour guides is a profession restricted to Thai nationals and Thai companies (39 professions regulation and Foreign Business Act List 3). However there is a clear demand and need for foreign tour leaders (or tour facilitators) to accompany many tour groups coming from abroad.

The purpose of allowing foreign tour facilitators is to enhance the tourist experience by having a person with some local knowledge and speaking the same language and appreciating the culture of the foreign tourists in that group. The foreign tour facilitator does not replace the local Thai tour guide. This is comparable to Thai tour leaders travelling with Thai tourists to foreign countries or being based in foreign countries to support the experience of Thai nationals visiting those countries. The tour facilitator can for example:

<sup>7</sup> <https://www.prachachat.net/general/news-654681>

- i) Accompany the group
- ii) Support any language issues
- iii) Translate
- iv) Take direct care of group members for safety reasons; understanding other needs and enhancing the experience, particularly in languages which are not popularly covered amongst Thai tour guides.

## E. Major issues in Tourism

### (1) Sustainable Tourism

#### (a) Environmental

Some aspects of tourism have seen over-building and destruction or degradation of the environment. Codes and regulation seem absent. A workable Code and supported, reasonable regulation are needed. Thailand Natural Resources are ranked #21 out of 140<sup>8</sup> countries. This is clearly a key factor in bringing tourists to Thailand. With increasing tourist numbers there is a need to protect and promote the sustainability of Thailand along green line in order to pave the Way for a More Sustainable & Inclusive Future, reflects the increasing focus on ensuring the industry's sustained growth.

According to the assessment of Travel and Tourism Competitiveness report by the World Economic Forum, Thailand was ranked #31 from 140 countries assessed and was particularly strong on Natural resources (#21), Tourist Service Infrastructure (#14), Price Competitiveness #25, and Air Transport Infrastructure (#22)<sup>9</sup>

The World Travel & Tourism Council (WTTC) and the United Nations Environment Programme (UNEP), launch a major new report today, addressing the complex issue of single-use plastic products within Travel & Tourism. The report is a first step to mapping single-use plastic products across the Travel & Tourism value chain, identifying hotspots for environmental leakages, and providing practical and strategic recommendations for businesses and policymakers.

Please see the Cross Sectoral Issues chapter for more on sustainability and green initiatives.

In Thailand, the Care About Plastics (CAP) project originated by JFCCT is a collective of socially responsible businesses, government officials, trade and social organizations working towards a plastic waste reduction in Thailand. This is achieved through the provision of socially responsible and sustainable solutions to support the hospitality industry in eliminating their plastic waste and reducing their environmental impact. Covid-19 period is also major cause of packaging in hospitality businesses due to use of cling wrap and plastic containers. CAP's partner is Baan Nokkamin Foundation with logistics operated by is affiliated organization Maana Social Enterprise.

EABC continues to work with JFCCT for commendable development towards more sustainable tourism in accordance with the CAP Project and beyond.

<sup>8</sup> WEF\_TTCR\_2019.pdf (weforum.org) p.85

<sup>9</sup> Ibid

## (2) Digitalisation

We welcome the enactment of changes to the legislation that enhance digitalization with an impact in the tourism industry and the opportunity to provide suggestions in order to achieve the most workable solutions. More information on wider perspective is in Digital Economy/ICT Chapter.

### (a) PDPA

Personal Data Protection Act (PDPA) is about protecting privacy. Its entry has been deferred twice and is due to come into force in June 2022. It brings responsibility of firms managing personal data to protect personal data obtained from individuals from being used by them or others without the consent of the data subject. For hotel businesses, it is common to collect information from guests for the purpose of data analysis in order to provide services that serve the needs of the guests. If a third party is hired to process the data, that third party's activity is also regulated and is obliged to carry out activities in accordance with laws to maintain the confidentiality of the data. Hence, to comply with the PDPA, it will be necessary for hotel businesses to prioritize and invest in their process management and cyber security systems to ensure the storage of guest personal information is not leaked and misused.<sup>10</sup>

The EU GDPR (General Data Protection Regulation) also applies in Thailand through extra-territorial reach if there is a relevant connecting factor. However it will be the PDPA which will be the primary law on the matter.

<sup>10</sup> 1 <https://techsauce.co/tech-and-biz/hotelman-pdpa-hotels>

### (b) eCommerce Tax.

The tax is roughly in line with OECD norms; it requires those providing digital services into Thailand to register for VAT if Thailand based annual turnover is over THB 1.8 million p.a. There is no input tax credit under the simplified registration systems. Although in force from 1 September 2021, there remain some issues to iron out. On-line travel agents (OTA) may be caught by the tax.

### (c) Digital Platforms Governance Decree

The decree requires the operators of digital platforms (no matter where located) to register and report information about their business and services to the Electronic Transactions Development Agency (ETDA) if their business is about Thailand. The purpose is about good business practices and consumer protection. EABC supports these general purposes, but there are issues with over-reach and high administrative overhead. While a licence is not proposed (rather, just registration), the conditions make it more like a licence. More information in the Digital Economy/ICT Chapter.

### (d) Immigration Administration and features

Ease of entry and immigration administration would simplify tourist entry to Thailand. Ease of entry and infrastructure to support it are needed.

Prior to the pandemic, the huge queues at immigration for tourists, often with no queue at a number of eGates suggests that better use should be made of eGates and wider use of eVisas and visa-free entry. The foreign business community recommends easier entry into the

Kingdom with the availability of e-visas, visa free entry and faster immigration procedures which remove unnecessary steps.

The recommendation is to devise a procedures for easy registration for eGate usage for visa holders where information is held on file; linked to a passport, for citizens, permanent residents and tourists that have applied for and received an e-visa in advance of arrival. The thinking that eGate should be a privilege for citizens only or a limited set of arrives does not help to reduce the costly overhead of large queues. The user groups should be as wide as possible. The list of Visa free economies should be expanded.

The e-visa would be similar to Vietnam, Cambodia and others which allow tourist to apply on-line for a visa to be received in advance of arrival. This allows easy entry and will also help to alleviate the long lines and waiting periods at the visa upon arrival desk. Visa free entry wherever feasible should also be pursued.

The re-recognition in 2021 of 56 economies for visa-free arrival is welcome. That is a positive step for ease of entry.

The form TM.6 was ceased for citizen entry with plans to cease it for foreigner entry. Malaysia and many other economies have no such forms and no plans to make digital forms. We suggest that it should not be part of a Thailand Pass as no such form is needed and that thus the TM.6 be

EABC recommends a close focus on removing administrative overhead, not just making an App for it. The proposal for a ‘foreigner portal’ to be implemented

2023–2027 is a nice idea but is unlikely to serve the needs. Any such tool should have a desktop version at least as necessary documents tend to be on laptop rather than smart phone. Rather, we recommend:

- i) Acceleration of a whole-of-government, digital government plan with interoperability and single sign-on would be preferred. This avoids the need for foreigner-only maintenance of a separate portal with downgraded
- ii) A base level portal with information links (avoiding dual maintenance) about accommodation, travel and other matters might be useful.
- iii) An on line summary of requirements for foreigners in Thailand with links may also be useful.

#### Recommendations:

EABC recommends a close focus on removing administrative overhead, not just making an App for it. Removing TM.6 for foreigners, as it was done for Thai nationals, is part of this.

#### (e) Social media and influence marketing; OTA bias

As with many industries, the Tourism sector relies on social media, promoters and influencers. EABC encourages **truth in advertising**. Over promotion will only disappoint.

On a separate but related issue, booking platforms have been asked by Thai authorities to drop illegal and unregistered hotels from their listings.

Negative reviews about restaurants, hotels and other tourist related services can harm, even destroy a business. Posted anonymously they can be vicious and unfair. The world is trying to come up with solutions which include responsibility of platforms. Defamation action is certainly not an easy or the best remedy.

See more under Fake News and On-line commentary in the Digital Economy/ICT chapter.

***Bias in On-Line Travel Agents (OTA) for bookings*** is a separate issue. There is a practice where an on-line booking platform seeks to prevent the hotel offering a better deal than is available via the on-line platform. In order to remain competitive, it is said that hotels must be able to promote direct sales on their own websites. Some online-booking platforms, however, have tried to prevent hotels from offering their services at lower prices on their own websites by imposing price-parity clauses in their contracts with hotels. That allows the OTA to 'guarantee' best price which is important for marketing.

Swiss authorities have determined that such practices are anti competitive. In its final report of May 2017 on an inquiry into the e-commerce sector, the European Commission took a more lenient approach with a safe harbour for both wide and narrow price parity clauses by stating that such clauses are unproblematic if the market shares of both parties do not exceed 30%. If the market share of either party exceeds 30%, an individual assessment would be required.

This provides some background for the situation applicable to Thailand and whether Thai hotels would be free to determine their own prices.

The pandemic has brought enormous pressure on profits. A fair solution to this issue needs to be explored.

### **(3) Fair competition in the hotel industry & Transportation**

#### **(a) Airbnb and other short term accommodation**

Hotels are currently facing price pressures. This causes sales levels with little contribution to overhead. This is at a stage where travel restrictions are starting to ease and borders starting to re-open.

The general lack of standardised ratings (eg number of stars) may exacerbate the issue. Operating a hotel comes with many requirements.

There are some positive developments in Fast Track Regulatory Reform (see more in Cross Sectorial Issues chapter) about combining licences and reducing the number required in the hotel and spa industry.

The law in Thailand does not allow condos to be rented out for short stays and serviced apartments are limited to min seven night stays.

Non hotel operators bring a element of unfair competition. The lack of licensing and other factors such as insurance coverage amongst non hotel listings (eg Airbnb) raise not only safety issues but issues of competition and social issues. These are undercutting prices of international standard hotels competing with a completely different operational cost base and structure.

EABCs 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.

#### **Recommendations:**

EABC recommends solution stricter implementation of existing regulation plus the creation for better and clearer rules and regulations for non hotels. 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. A roundtable dialogue is needed with a public hearing. Measures against price fixing with online agencies is another area which needs to be examined.

#### **(b) Thailand's new regulations for online ride-hailing services**

Thailand's Transport Ministry has introduced the Ministerial Regulation Re: Ride-Hailing Service Vehicle via an Electronic System B.E. 2564 (2021), which was published in the Royal Gazette on 23rd June 2021 which stipulated new rules for ride-hailing services. The regulation aims to regulate the types of vehicles that can be registered, the number of registered vehicles per user, and the fees that are levied and collected. Privately operated ride hailing has improved the availability of taxi-type services in greater Bangkok at least and has offered new employment opportunities.

#### **(4) Luxury Goods**

Thailand currently imposes a high import duty rate of between 30 per cent and 60 per cent on luxury fashion goods. Experience has shown that foreign luxury brands are a natural choice for international tourists, especially amongst the more wealthy consumers who are looking to 'complete' their leisure trip. These visitors tend to shop at large malls which host luxury brands (where a more complete shopping experience and a wider range of luxury goods can be enjoyed), not just at major airports. Experience has also shown that such prices and range of genuine goods does have a significant impact on choice of destination. Being a good shopping destination for such goods is thus a key element of attractiveness.

EABC recommends that this import duty rate be reduced significantly as soon as possible – eg down to say 10% only so that Thailand is competitive with other markets where the import duty is reduced greatly, and then to zero in the medium term.

Other approaches (for example from the Thai Retailers Association) rely on reducing the import duties according to each category of luxury goods based on (MSRP- Manufacturers' Suggested Resale Price) for example for cosmetics at 1,000-3,000 Baht up, Bag at 30,000 Baht up, fashion apparel 10,000 Baht up, the import duties would be at 0%. The table below is just an illustration.

**Proposal for luxury import duty elimination to 0% for 6 key categories applicable to specified minimum MRSP SKUs only**

Potential options for duty reduction / elimination

Proposal to **permanently** eliminate or reduce import duties on selected product categories to **drive retail sales** (from tourists & locals)

**Option 1**

- Import duty **elimination** to 0%
- Minimum price by **category**
  - Min price could be imposed on CIF or MSRP

**Option 2** (Less preferred)

- Import duty **reduction** to 5-10%
- **No minimum price** imposed
- Potentially increase risk of backlash from local manufacturers
- Need to be more selective on HS code.

Price threshold by category

Categories	Import duty (effective rate %)	MSRP threshold (THB)
Cosmetics	24%	1,000 - 3,000 <sup>1</sup>
Perfume	30%	4,000
Bags (leather)	29%	30,000
Shoes (leather, and sneakers)	24%	10,000
Belts (leather)	28%	5,000
Fashion Apparel	30%	10,000

Reducing the import duty rate significantly would allow reduction in prices and thus produce higher volume sales which would bring in higher receipts through VAT and (with a low import duty), higher volumes would drive import duty amount. Typically locally made luxury goods are lower priced. Tourists would have a choice in knowing what they are getting, but the significant reduction or removal of a high import duty on luxury goods would make them much more attractive. A further benefit would be to reduce the incentive for making counterfeit goods. Such a move would also assist Thailand in its efforts to enhance intellectual property protection.

The COVID-19 pandemic which has greatly impacted the tourism industry has provided an indication of the real domestic market size of luxury goods. As local consumers could not travel abroad, they bought luxury products and services in Thailand resulting in roughly 20-30% increase in domestic sales in 2020 and 2021 which has gone some way to compensate the loss from international tourists. That phenomenon is not sustainable however and does not change the recommendations.

### Recommendations:

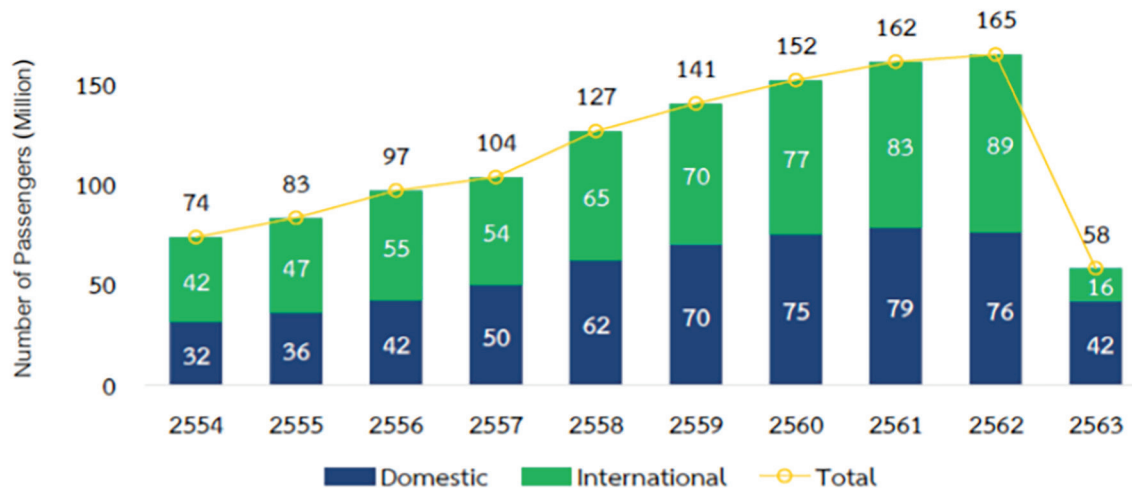
As pathway toward economic recovery, the long-term policy should promote Thailand as a global shopping destination for tourists. By achieving that goal, gradual reduction of import duties in order to be competitive with other countries in the region (e.g Japan, Korea or Singapore) are essential.

## (5) Aviation

The aviation industry in ASEAN remains heavily regulated despite the changes in the industry environment over the last three decades. The ASEAN Masterplan for Connectivity correctly identifies the key challenge in liberalising air travel: the timely implementation of open skies and other relevant policies by the ASEAN Member States. It is in our common interest to promote the urgency of swift action to further liberalize the air travel industry. Pursuing a Single Aviation Market is recommended.

In Thailand, number of overall Passengers in 10 Years (2011-2020) show overall growth of passengers . Before the pandemic, annual growth rate (CAGR) was 10.58 percent per year divided into the number of international passengers increasing on average of 9.74 percent per year and the number of domestic passengers increasing on average of 11.63 percent per year. However, in 2020, the number decreased significantly due to border closing and travel restrictions.

### Statistics Regarding Number of Overall Passengers in 10 Years (2011-2020)



Source: Sources: Airports of Thailand Public Company (Limited), Department of Airports, U-Tapao Airport Authority and Bangkok Airways Public Company (Limited) Analyzed by Aviation Economics Division under CAAT

#### (a) Commercial Aviation

Thailand airports, especially BKK and DMK have become an aviation hub. A plan sees Utapao (UTP) as the leading part of a Bangkok / Eastern Seaboard area facility with high speed rail connections. This may be overly dependent on EEC plans however. Phuket HKT and Chiang Mai CNX are also heavily used. IATA's October 2015 report and recommendations to AOT has three key points:

- i) Soft spots and cracks in runway and taxiways at BKK. AOT had identified 'root cause' issues which go back to construction of the airport. AOT has a plan, accelerated implementation is needed.

- ii) Infrastructure capacity at BKK, DMK and HKT. Suvarnabhumi (BKK) – the nation's premier airport – is operating at well over capacity
- iii) Cost of flying needs to be kept competitive. These have not materially changed other than for UTP development due to EEC.

In late 2021, H.E. Mr. Saksayam Chidchob, Minister of Transport has stated that the government is hoping to accelerate the recovery of Thailand's aviation industry, which hopes to see 200 million passengers per year by 2031.

Major infrastructure plans (e.g. Expansion of Suvarnabhumi Airport) are on-going to support aforementioned initiatives.



## (b) General Aviation

Private jets and other private aircraft (eg single engine piston, twin engine turbo-prop; gyrocopters, helicopters) and even smaller non-mainline carrier aircraft are not as well supported in Thailand as they are in some other ASEAN economies. Parking space at most of our International airports is insufficient and needs to be enlarged.

In the high-margin, luxury travel segment, it is counter productive to attract high-end yachties and VIP tourists flying in on private jets who are then being told that there is no overnight parking available in Phuket or Krabi or Don Muang and that they have to send their aircraft to remote parking in Surat Thani or U-Tapao.

General aviation can have a number of uses other than just for private or business transport. Higher-end tourism and medical evacuation are but two other relevant uses.

A review of the requirements of this area suggests that the sector could be better served in the interests of the national economy. Foreign and local business community members are well prepared to engage in dialogue in order to address the specific concerns.

The increase in AOL fees under The Air Navigation Act (no. 14) B.E. 2562 which came into force on 24th of May 2019 seem overly burdensome.

As concerns AOL fees we should add that there must be distinctions made in license fees between fees for Scheduled carriers and General Aviation as proposed fees for GA are excessively high.

CAAT should be encouraged to prepare for the introduction of eVTOL aircraft as well as hybrid VTOL's which will be introduced for commercial commuter operations by 2025. Regulations for eVTOL due in 2022, for use as of 2025. Earlier support would be valued.

We recommend to start preparing for regulations on operations, fees, pilot licenses and Air Traffic Control systems now as development worldwide continues at fast pace. Adapting from procedures already published by EASA is one easier means.

Restrictions on foreign ownership of AOLs came into force in January 2018 relying on a decree which is over 45 years old, which was made allegedly for safety purposes only. There is more about foreign investment restrictions in the CSI Chapter.

A review and rationalisation of pilot licensing categories is needed better to support non fixed wing aircraft would see greater economic development in that sub sector.

### Recommendations:

General aviation can have a number of uses other than just for private or business transport. A review of the requirements of this area will support the economy better. Foreign business community members are well prepared to engage in dialogue in order to address the specific concerns.

## F. Future of Tourism in Thailand

### (1) Reskilling for Economic Recovery

During the pandemic some sectors were gutted due to layoffs and downsizing. Organisational learning and the capacity to offer world-class experiences were downscaled. Many businesses in the hospitality sector have stopped operating during the pandemic, some permanently, some closing due to lack of customers, or by forced closure.

Reskilling is essential in order to deliver on expectations, and for economic recover. It needs a workable and manageable curriculum plan. For example, using a hospitality competency framework, government support for training and re-skilling both for employers and individuals or relaxation of foreign hiring limits, at least for a time and special visas for hospitality.

Thus the change in landscape of the deployed workforce in hospitality is immense. The impact is not only the number of people impacted and the range of skills but the organisational learning which is disrupted.

This slowdown due to the pandemic is a great opportunity to mobilize all the duly accredited hotel, culinary and other Tourism/ Hospitality education and vocational organizations to reskill employees who have been made redundant or dramatically slowed down their daily work pace. Target staff with say 2-3 to 20 years' experience with above 20 years being mentors, benefitting from train-the-trainer programmes.

These institutions will need financial support which tourism operators cannot afford. Economies of scale and economies of scope are also relevant. Government can provide financial support to these training and educational institutions by grants and soft loans when taking qualified tourism employees based on some simple criteria.

#### **Recommendations:**

Reskilling is essential in order to deliver on expectations, and for economic recover. It needs a workable and manageable curriculum plan. The opportunity to recover into a greener economy, with more skills and upgraded skills, should be grasped.

#### **Reskilling for economic recovery in the Hospitality sector needs:**

- 1) A workable and manageable curriculum plan for example using a hospitality competency framework would be ideal but even without such a scientific approach, identifying skill sets needed can be done.
- 2) Identify existing schools and institutions.
- 3) Identify support from existing government and non-government programmes.
- 4) Support by major subsidies (eg 85% to 100% of the cost) for training and re-skilling for individuals and teams in firms.
- 5) Relaxation of foreign hiring limits, at least for a time and special visas for hospitality. While Thai citizens may be the most import group to support, some global hospitality properties may be able to deploy the right staff to raise the organisation's skills and would be essential in a train-the-trainer model. Make use of developing programmes for attracting talent (eg Smart Visa, LTR).

## (2) Strategic issue on level in target market

Government proposals to seek ‘higher end’ tourists – ie those who will spend more on accommodation, tours and other items, is a government policy expectation which needs to be met. This includes issues of safety, functionality, communication (eg language) and general best practice industry standards.

EABC appreciates this value but recommends that the wider tourism market should not be sidelined. There is still a place for mid market and groups who will spend less than higher end tourists only. Two and three star hotels have a place in the sector.

Indicatively, daily spending of above THB 4,000 per day is considered higher end. Thailand has the assets and facilities to support both places in the market (for example two and three star hotels) as well as four and five star properties. While there is no global, consistent standard for ‘starring’ hotels, the market position is understood.

## (3) 13<sup>th</sup> National economic and social development plan (2023-2027)

Among 13 strategic goals under the new draft of Thailand’s 13th national economic and social development plan (2023-2027), it is noted that Tourism remains its position as one of the top priorities. The three main goals include elevating national tourism to high-quality tourism, increasing reliance on domestic tourists as well as spreading revenue across different regions, and managing tourism sustainably.

The draft further provides the strategies to guide development actions in accomplishing the three goals. The first strategy is to promote high-value tourism products, services and activities. The second and third ones are to evaluate the quality and standard of national tourism respectively. The fourth one focuses on the development of personnel skills in the tourism sector while the fifth strategy aims to rectify the existing laws/regulations that are outdated and hinder business operation. The last strategy is to develop smart information system that is accessible and user-friendly.<sup>11</sup>

(Sources: Office of the National Economic and Social Development Council)

## (4) Thailand’s National Tourism Development Plan (2017-2021)

The National Tourism Development Plan Volume 2 (2017 – 2021) developed by Roland Berger and endorsed by the Ministry of Tourism & Sports at the time, set forth the stepping stones of development that Thailand should take in order to become the world-class high-quality destination as portrayed in the Thailand Tourism Vision 2036. The framework evolved around extensive engagement and collaboration of all tourism industry stakeholders. The second NTDP consists of 5 strategic axes and 55 initiatives, each aims to strengthen the quality and the capabilities of the critical factors in tourism development. Each axis focuses on developing the necessary infrastructure, the quality tourism offerings, the quality of tourism human capital and participation of local community, the authentic Thai image through effective marketing, and the

<sup>11</sup> <https://www.nesdc.go.th/download/document/Yearend/2021/plan13.pdf>

integrative developments and effective governance. This kind of strategic approach with multi-stakeholder input was a useful tool.

## (5) Safety & Security in Tourism

The Understandings and principles from the 2013 Chao-Phraya Declaration<sup>12</sup> about safety and security continue to be relevant. These include:

- i) Public and private sector to create an environment in which tourists feel safe and secure, with all stakeholders across the broad spectrum of tourism and travel working in harmony to ensure that visitors to Thailand, acting responsibly, are made aware of the potential risks.
- ii) Avoid and correct negative, wrong perceptions about Thailand tourism.
- iii) Standards of safety and security must be improved and enforced by all parties to ensure that the vast majority of business and leisure travellers to Thailand experience a safe, secure, enjoyable and memorable stay. (By delivering on this objective, there is an immediate cost benefit in terms of lower overtime costs for employers)

Safety & Security also includes avoiding scams.

### **Recommendations:**

Safety & Security in Tourism in Thailand has improved greatly. There are still standards to be set, education to be effected procedures to be implemented. EABC sees this as part of economic recovery in the sector.

<sup>12</sup> <http://www.jfcct.org/wp-content/uploads/sites/1871/2016/03/Chao-Phraya-Declaration-Nov-18-2013.pdf?nocdn>

# Transport and Logistics

## SUMMARY OF RECOMMENDATIONS

### 1. Thailand as logistic destination

- 1.1. Given that Thailand is a heavily export-dependent country, the importance of the logistics industry can never be overstated.
- 1.2. RCEP - a key to unlock tariff savings and a path towards the deep integration of regional supply chains and industrial chains; tremendous opportunity to expand trade with other RCEP members which contributes to about 53% of Thai export market.

### 2. Long term goals for customs facilitation

- 2.1. Legal Framework: 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.
- 2.2. Reasonable Care Concept: 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.
- 2.3. Reward and penalty system: EABC welcome the news that Customs will set up a Working Group to study reward and penalty systems to ensure the elimination of conflicts of interest. We urged that there should be a clear plan and timeline toward the elimination of the reward and penalty system.
- 2.4. Goods in transit and ACTS: In order to enhance Thailand as a Regional Logistics Hub, Goods in International and Goods being transported within Thailand between Thai Customs offices under Customs Bond transit will have to be liberalized to the level of international best practice, but the steps to be taken will differ.
- 2.5. Digitalization in customs and document compliance: In order to achieve a paperless environment, there is a need for further cooperation among related parties to promote the practices especially at each customs house and check point.

### 3. Individual measures in customs and trade facilitation reforms

3.1. Time allows for goods to be remained in the bonded warehouse: The EABC recommend that Customs extend this period to one year to match the period to be allowed for Bonded facilities in general.

### 4. Rules on foreign direct investment

4.1. We recommend that Thailand study opening the postal market to Private Sector and International competition.

4.2. 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. Logistics should be removed from List 3 of the FBA. World-class Service industries play a critical role in supporting the growth of strategic manufacturing sectors. The desired major investments from Foreign Logistics Services Providers are unlikely to materialize as long as Foreign investors are restricted to minority holdings.

### 5. IP Customs Enforcement in Thailand

5.1. Digitalizing customs formalities and automating clearance procedures should allow for safeguards to include IPR infringement risk indicators. This would facilitate the detection and flagging of suspected IPR infringing shipments, and could perhaps provide a good opportunity for customs authorities to exercise their ex-officio functions, among other remedies available for IPR owners.

## A. Thailand as logistic destination

A research report<sup>1</sup> revealed that in 2021 global logistics costs as a percentage of global GDP were 10.8% with the Asia-Pacific region's logistics costs ratio to GDP of 12.9%. However, the COVID-19 has severely affected many countries worldwide, including Thailand. Another research report<sup>2</sup> revealed that in 2021, Thailand ranks 11th from 50 countries worldwide dropping from 9th in 2020.



Source: Armstrong & Associates

<sup>1</sup> The survey was conducted by Armstrong & Associate Inc., a third-party logistics (3PL) and market research consulting expert, (October 2021). See: <https://www.3plogistics.com/3pl-market-info-resources/>

<sup>2</sup> The results of the Agility Emerging Markets Logistics Index (AEMLI) by Agility Co., Ltd., a global leading logistics expert, (2021). See: <https://logisticsinsights.agility.com/>

In 2020, Thailand's logistics costs are estimated to amount to 2,215.7 billion baht; equal to 14.1% of Nominal GDP. While the logistics costs-to-GDP increased from last year by 0.9%, the costs barely declined, by only 0.7%. The cost reduction is a result of the global COVID-19 outbreak and the cessation of national economic activity (including tourism, manufacturing, and imports and exports).

Value added of logistics businesses also declined from 2019 by 2%, which amounts to 477.4 billion baht due to the pandemic. Additionally, overall volume and value of both imports and exports in 2020 decreased from 2019. The import volume declined by 10.5% while the export volume fell by 5.8%.

The value of Thai foreign trade dropped by 9.3% especially in major country groups, namely, the European Union, ASEAN, the Middle East, and BIMSTEC.<sup>3</sup>

In 2021, Global recovery from the pandemic has caused demand to rise faster than the global supply chain can respond, resulting in the sharp rise in shipping cost and world commodity prices.

According to an article by the Loadstar magazine in January 2022, from Asia to North Europe, Xeneta's XSI gained 2.6% on the week, to \$15,129 per 40ft, while the Freightos Baltic Index (FBX) was up 1.4%, to \$14,473, and Drewry's WCI North Europe component put on 3%, to \$14,028.

<sup>3</sup> *Thailand's Logistics Report 2020 Office of the National Economic and Social Development Council (September 2021)*

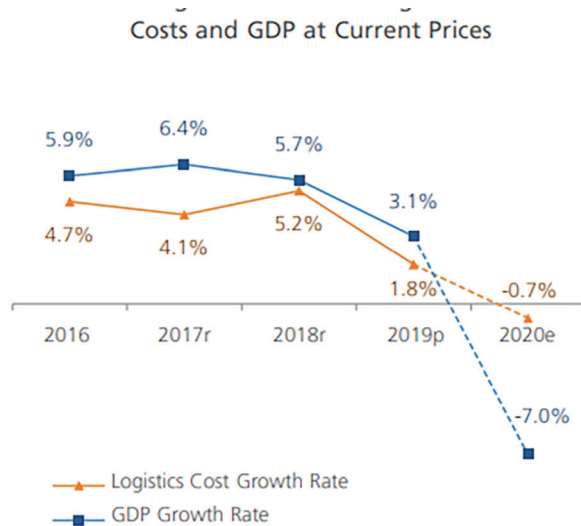
Notwithstanding record earnings in 2021, the lines are continuing to push the advantage of supply chain disruption to increase short-term and contract rates on the routes. On the transpacific, the FBX, which includes premium fees, was up 7.2% on the week for Asia to the US west coast, to \$14,627 per 40ft, the WCI, which does not record premium fees, edged up 1%, to \$10,621, while the XSI remained much lower, at \$8,279, albeit up 3.3% on the week.<sup>4</sup>

The container pricing is likely to be the the inflating factor in overall logistics. The container crisis is caused by several factors including the decrease in production of new containers, China's V-graph recovery, and labor shortages in ports causing unsatisfactory rotation of containers which eventually leads to a continuous increase in residual containers. The shortage of containers puts a pressure on many Thai exporters to raise their prices.

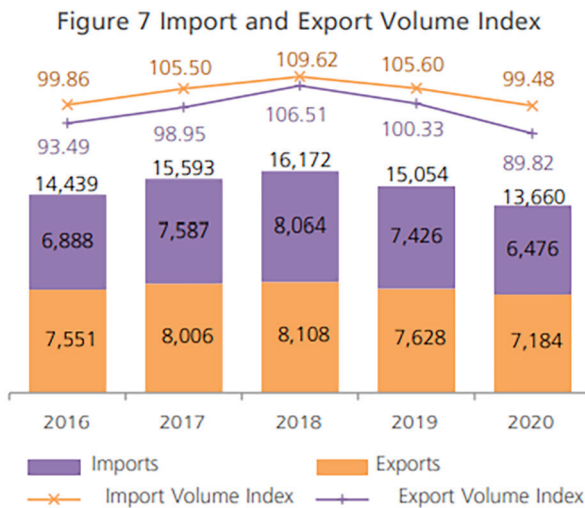
According to a TDRI report<sup>5</sup> in January 2022, it is estimated by the TDRI that Global freight rates will remain higher than their pre-COVID level as the few remaining shipping liners can collectively set the rates.

<sup>4</sup> *'Snouts in the trough' attack, as Maersk results are turbo-charged by 80% rate hike' by Mike Wackett, Loadstar magazine, (14 January 2022) see: <https://theloadstar.com/snouts-in-the-trough-attack-as-maersk-results-are-turbo-charged-by-80-rate-hike/>*

<sup>5</sup> *TDRI – Dr Kirida at Regional Outlook Forum 6 Jan 2022*



Source: Logistics Development Strategy Division, NESDC



Source: Ministry of Commerce and Bank of Thailand

The TPSO estimated that Thailand's logistics industry was the fourth largest industry in the country's service sector, generating economic outputs during the first half of 2021 of approximately US\$ 12.2 billion, accounting for 5% of gross domestic product. There is a large untapped potential in Thailand in many services sectors, notably for the logistic services providers where Thailand is a transit hub. With a favorable geographical position at the heart of Southeast Asia, together with the evolution of the Asian Economic Community (AEC), Thailand's position as the leading logistics hub in ASEAN has been strengthened but there is more to be done. Given that Thailand is a heavily export-dependent country, the importance of the logistics industry can never be overstated.<sup>6</sup>

This unique position has significantly increased Thailand's opportunities for cross-border trade and import-export shipments. Although the COVID 19 pandemic and long-term lockdowns have left a big impact on the Thai economy causing low consumption levels and disruptions of supply chains,<sup>7</sup> Thailand managed to bounce back and gained more than THB 6 trillion from exportation in just 10 months (January 2021-October 2021).<sup>8</sup> Given Thailand's robust growth has been largely fuelled by international trade, Thai's transportation and logistics sector prove to offer strong potential to be the key players in trade, travel, and investment market.

<sup>6</sup> *View of The Impact of Logistics Costs on the Economic Development: The Case of Thailand | Business and Public Administration Studies (bpastudies.org)*

<sup>7</sup> *Thailand Freight and Logistics Market | 2021 - 26 | Industry Share, Size, Growth - Mordor Intelligence*

<sup>8</sup> *TPSO FC live video*



The government is facilitating these significant investments in transportation, logistics, and infrastructure projects. Thailand's national infrastructure development program has committed US\$ 25.2 billion to 36 projects concerning rail and road upgrades, public transport improvement, airport expansion and seaport development nationwide to promote future connectivity between key hubs and gateways because it recognizes the surging demand for national and cross-border transportation and the opportunities it creates for investment in the kingdom.

Notably, in 2020, the Ministry of Industry's industrial development strategic plan to promote the Eastern Economic Corridor (EEC) as a leading ASEAN economic zone is expected to drive additional infrastructure investment projects worth US \$43 billion by 2022. The broad range of transportation infrastructure projects coupled with government support creates a highly favorable investment climate for companies in the transportation and logistics industries.

The Thailand Board of Investment (BOI) provides enticing privileges to foreign investors to support further logistics and transport infrastructure development. Subject to conditions and/or approval by relevant government agencies, the BOI provides investment facilitation for investors through its competitive package of tax incentives, general incentives, and assistance relating to smart visas and work permits. The BOI has reported Foreign Direct Investment (FDI) amounting to US \$9.3 billion in the EEC in aggregate, and a range of Public-Private Partnerships (PPPs) have been established to meet the

need for urban mobility and accessibility in line with the government's smart city framework, Thailand 4.0 strategic direction, and urban development initiatives.

In the wake of rising trade volume, a lot of freight aggregation platforms are also being started in the region. The Regional Comprehensive Economic Partnership (RCEP) of which Thailand is a party, came into force on 1 January 2022. The transport and logistic industry will have even a bigger role in the Thai economy. RCEP will promote utilization of tariff preferences and allows originating materials to be cumulated among 15 Member States. Therefore, the scope of cumulation will be broader than ATIGA and ASEAN+1 FTAs which have 10-12 members.

RCEP facilitates trade on a 'single rule' basis making it less restrictive than other ASEAN+1 FTAs. It allows exporters and producers to certify origin by themselves which will reduce the cost of business operation. It also improves the timeliness of customs clearance of goods and international competitiveness of enterprises.

Therefore, by entering RCEP, Thailand might find a key to unlock tariff savings and a path towards the deep integration of regional supply chains and industrial chains. Entering RCEP is also a tremendous opportunity to expand trade with other RCEP members which contributes to about 53% of Thai export market.

## B. 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. Customs clearance is one of the critical processes in the freight forwarding market that largely affects efficiency. The governments of the region have started to take the necessary steps for improving the efficiency of the customs clearance process.

The present national laws and regulations governing the Importation, storage in bond, transit and re- export of cargo are, however, still unsuited to those ambitions. The new Customs Act 2560 has made some minor changes, and most of them are beneficial. It is still the case, however, that a Regional Logistics Hub operating in a fashion attractive to International Distributors of Goods or their Logistics Service Providers cannot be operated under the existing Law and Regulations.

The EABC welcomes the establishment of the Eastern Economic Corridor (EEC) to attract new business and to enhance infrastructure. To make the EEC interesting especially for ASEAN or Asian wide distribution centres, customs handling would need to be adapted to the needs of such a logistics concept. We understand that the EEC or companies in the EEC can be exempt from general customs law under Section 57 of the EEC Act. We suggest to have regulations drafted for companies to especially enable region wide distribution centres including distribution of goods in transit to neighbouring countries, free zones or bonded areas. This should be setup as general rule and regulation for e-commerce businesses as well as regular cargo and not made available upon investment only.

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, features with significant potential for improvement:

### (1) 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 should be expected from all stakeholders. More in the CSI chapter on consultation.

**Recommendations:**

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.

## (2) Reasonable care concept

Customs should recognize reasonable care by the trading community to encourage compliance with laws and regulations. This tangents the issue of intent or lack of, in a non-compliance or violation: distinguishing between unintentional non-compliance and intentional/fraudulent violations.

Countries such as the US and EU have clear programs which encourage companies to voluntarily comply with regulations, which recognize proven reasonable care and allow the trading community to voluntarily disclose errors/violations without attracting significant penalties. It should

not be the case that all cases be deemed fraudulent and therefore attract significant penalties. Customs should take into account “reasonable care” by recognizing internal compliance programs of traders, publishing clear guidelines on how to comply and allow for inadvertent/unintentional errors by the trading community. The present rules, by not recognizing and rewarding self-declaration of violations by trading companies encourage deception and re-inforce the adversarial relationship between Customs and Im/Exporters.

In the case of disputes arising despite all efforts, an impartial, separate legal channel should be available for resolution of such disputes. Such a channel may be either be the standard external legal system or, if Customs-internal, should have equal participation from the Private and Governmental sectors and practice transparency and openness in all dealings. The structure of the Appeals Committees in the 2017 Act, whilst incorporating several improvements over the old Act, cannot be perceived by the Private sector as impartial given that all members are from Governmental organizations with no Private sector representation.

**Recommendations:**

Clearly indicate ways in which companies can comply with regulations and Customs can accept the concept of “reasonable care”. Thai Customs to accept voluntary disclosures from importers / exporters / agents / any other concerned parties of errors and breaches of all and any regulations with reduced / waived penalties. Customs to publish guidelines for Compliance to aid much-needed transparency.

### (3) 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.

*“Section 242: Any person who imports or exports goods, which have not been passed through customs formalities into or out of the Kingdom, or unloaded goods from a means of transport, a bonded warehouse, a go down, a place of security, a permitted port or a duty free zone without a permission from a customs officer, shall be liable to an imprisonment for a term not exceeding ten years, or a fine of four times of a price of goods including a duty or both. Such goods shall be forfeited irrespective of whether or not there is a person inflicted with the punishment according to a judgment. Any person who attempts to commit the offence under paragraph one, shall be liable to the equivalent penalty”*

*“Section 243 Any person who imports goods, which have been passed through or being passed through a customs formality, into or exports such goods out of the Kingdom in any manner to avoid or attempt to avoid a duty payment with an intention to defraud the government’s duty*

*payable for such goods, shall be liable to an imprisonment for a term not exceeding ten years, or a fine from half but not exceeding four times of an additional duty or both. The court may order to forfeit such goods irrespective of whether or not there is a person inflicted with the punishment according to a judgment. Any person who attempts to commit the offence under paragraph one, shall be liable to the equivalent penalty”*

The EABC completely agree that, where there are clear instances of intentional non-compliance, traders should be penalized. However, technical mistakes are currently disproportionately penalized by Customs with fines of up to 4 times the value of the goods concerned.

This is a significant disincentive for foreign companies working in Thailand, especially where it is applied to routine stock discrepancies in the warehouses of companies manufacturing in Customs- free areas.

Whilst it is important to have in place effective customs investigation to prevent any offence or attempted breach of customs’ provisions, a clear distinction must be made between intentional, serious offences and unintentional or technical mistakes. This is well recognized under the Revised Kyoto Convention (RKC) which states that “Customs shall not impose substantial penalties for errors where they are satisfied such errors are inadvertent and that there has been no fraudulent intent or gross negligence. Where they consider it necessary to discourage a repetition of such errors a penalty may be imposed but this shall be no greater than is necessary for this purpose”.

EABC support the position taken by the Thai private sector represented by the Joint Standing Committee on Commerce, Industry and Banking (JSCCIB), that, in order to prevent abuse of the reward and penalty system, heavy penalties should only be imposed and rewards only allowed in cases which have clear fraudulent intent as reflected in international best practice under the RKC. The burden of proof of guilt should here, as elsewhere, be on the prosecution i.e. the Customs and, as mentioned above, in case of dispute, clear and independent legal judgement should be provided.

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.

#### **Recommendations:**

EABC appreciates the progress since 2017 and we are keen to see the positive developments on the reward and penalty system as recommended. With reference to the EABC meeting with Director-General of the Customs Department on 3rd March 2021, EABC welcome the news that Customs will set up a Working Group to study reward and penalty systems to ensure the elimination of conflicts of interest. We urged that there should be a clear plan and timeline toward the elimination of the reward and penalty system.

## **(4) Goods in transit and ACTS**

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 transhipped 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.

Due to the current pandemic situation the new setup has been slow in creating advantages but we endorse the ACTS, as a pathway toward ease of international transit of goods.

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. Sadao to Border station, Nong Khai, or from any Border station to an Inland Customs Area. 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, tranship 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. 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.

## (5) Digitalization in customs and document compliance

The digitalization of customs documentation allows harmonisation of information which enhances efficiency and effectiveness customs processes. Most importantly, with growing concern for environmental issues, the change protect the environment from countless paperwork. The European Union Customs Code (UCC) was adopted and applied on 1 May 2016 to shift the EU customs to a paperless and fully electronic and interoperable environment with core values of simplicity, service and speed.

### Recommendations:

In order to achieve a paperless environment, there is a need for further cooperation among related parties to promote the practices especially at each customs house and check point. Parallely, EABC remain to be a pinpoint to spread the information and practices to foreign business community.

In the case of Thailand, unfortunately businesses, logistics brokers and stakeholders still find that paperless system still requires hardcopies to be presented at customs checkpoints even though this should be completely 'paperless' since the notification no. 0501/3 dated 27 January 2020.

## (6) The customs valuation process

When filing import entry, the Customs Value is one of the most important items to declare. The Customs Valuation has grown in importance as to secure revenues with predicable and transparent manner despite the complex in terms of production and parties involving in supply chains. In Thailand, all imported goods, other than certain specific exemptions, are subject to Customs Duty and other taxes imposed based on Customs Act B.E. 2469, Customs Tariff Decree B.E.2530 as well as Ministerial Regulation No. 132 (B.E.2543), No.145 (B.E.2547) and No. 146 (B.E.2550) that amend Ministerial Regulation No. 132 (B.E.2543), and other relevant regulations are in effect for Customs Valuation.

Thai customs in some cases uses both buying and selling rate of imported goods to deduct the value of the duties. The selling value is evaluated by internet research and market value and from this number the buying rate is estimated.

However there is no specific reason to doubt the actual buying rate as stated on the commercial invoice from the shipper.

In cases Thai customs asks for proof of payment to overseas to release a bank guarantuee issued to cover the difference between the buying rate as stated on the commercial invoice versus the 'deducted buying rate by Customs. This creates unnecessary work and uncertainty for the importer in Thailand.

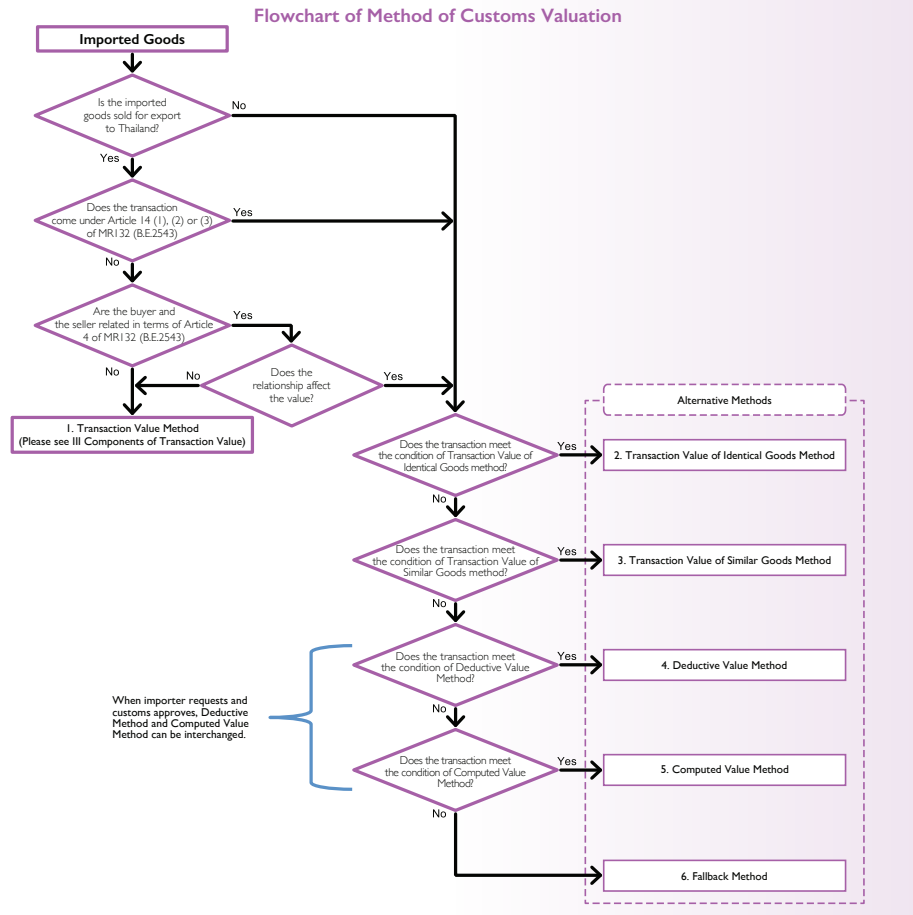
The General Agreement on Tariffs and Trade (GATT) should be followed as Thailand is a member of GATT since 1982.

## I. Transaction Value Method

The Transaction Value Method is the first and primary method for the Customs Valuation for imported goods that are sold for export to Thailand. Under this method, the Customs Value is the Price Actually Paid or Payable for the imported goods and the Adjustment under Article 8-16 of MRI 32 (B.E.2543) amended by MRI 45 (B.E.2547).

$$\text{Transaction Value} = \text{Price Actually Paid or Payable} + \text{Adjustment}$$

(For details of Transaction Value, please see Part III Components of the Transaction Value in this booklet.)



Source: 'The Customs Value of imported goods & Advance Valuation Ruling for Facilitated and Transparent Clearance of Importation' booklet by the Customs Department Customs Standard Procedures and Valuation Bureau, September 2014



## C. 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.

### (1) 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.

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. Whilst 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.

## D. Rules on foreign direct investment

### (1) Gradual liberalization of the postal sector

According to the Postal Act of 1934, the Royal Thai Government has the exclusive right to handle postal services. Collection, delivery or handling of letters and postcards fall under a monopoly held by Thailand Post. The breach of the postal monopoly by private postal, courier or express delivery operators is currently subject to a fine of THB 20 for each letter and postcard that is delivered from abroad to an addressee in Thailand. This creates an uneven level playing field, since the monopoly also covers segments which are outside the scope of basic postal services (such as express mail).

We recommend that Thailand follow other countries in gradually opening the Postal market to competition.

### (2) Liberalizing logistics services

We recognize and support the Thai Government’s policy of increasing foreign investment, both in Manufacturing and Logistics in Thailand.

Virtually all World-wide operating Logistic Service Providers are also operating in Thailand: they need to, given Thailand’s important position in international trade. For the most part, however, they operate on an “Asset-light” basis, working from rented offices and leased warehouses, owning few, if any 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.

Nobody is going to invest large amounts into a company which they cannot control and a market in which they cannot compete on an even playing field.

This position is at odds with Thailand's commitments to ASEAN, among others.

The ASEAN Logistics Roadmap contains a list of sectors where ASEAN member countries "shall endeavor to achieve substantial liberalization" by 2013. The objectives of the Logistics Roadmap are to "create an ASEAN single market by 2015 by strengthening ASEAN economic integration through liberalization and facilitation measures in the area of logistics services".

List 3 of the Foreign Business Act (FBA) includes logistics as an area requiring a specific licence for foreign companies to operate. EABC recommends the removal from List 3 of Logistics. More about the FBA in the CSI Chapter.

The AEC further committed to allow for foreign (ASEAN) equity participation of 70 per cent by 2013 under the ASEAN Framework Agreement on Services (AFAS) which required specific commitments. The substance of AFAS is now to be in an ATISA (ASEAN Trade in Services

Agreement, a sister agreement to ATIGA). The EABC feel that Thailand, as a country wishing to develop world-level Logistics capabilities and seeking investment from foreign Logistics companies in order to achieve that, should allow 100% foreign ownership of Logistics companies. A step on the way would be to 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.

#### **Recommendations:**

(1) We recommend that Thailand study opening the postal market to Private Sector and International competition.

(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. Logistics should be removed from List 3 of the FBA. World-class Service industries play a critical role in supporting the growth of strategic manufacturing sectors. The desired major investments from Foreign Logistics Services Providers are unlikely to materialize as long as Foreign investors are restricted to minority holdings.

### **E. IP Customs Enforcement in Thailand**

The Customs Act B.E. 2560 (2017) seeks to allow Thai customs officers to act more effectively against suspected IP rights infringements by introducing new penalties for transit and trans-shipment of counterfeit and pirated goods.

Digitalizing customs formalities and automating clearance procedures should allow for safeguards to include IPR infringement risk indicators. This would facilitate the detection and flagging of suspected IPR infringing shipments, and could perhaps provide a good opportunity for customs authorities to exercise their ex-officio functions, among other remedies available for IPR owners.

Trademark is only form of IP that recorded with Thai customs, which operates when Trademark owner can record with the IPR Center of the Thai Customs its registered trademark (once registered with the DIP) and designate a local representative (e.g. Thai law firm, importer/distributor to be contacted in case of suspected infringement.

The recorded trademarks will appear in the publicly accessible database. On any routine inspection, Customs will check any goods bearing that Trademark or a similar Trademark with the rights owner (if Thai) or its representative (if the rights owner is a foreign entity). The rights owner or its representative has 24 hours to inspect the goods and to file a request to seize should the products be confirmed as counterfeit goods. If there is no concern or representative does not show up, the goods are usually released. Once registered with customs the trademark records appear on a customs database. The system is in effect accessible on line by all custom officers across the country.

The Customs IPR Center has developed a new software program to facilitate the filings of the recordation with the Department of Trade Negotiation (DIP). Such program will contain up-to-date contact details of trademark owners and their representatives, and information on trademarks including their validity and lists of goods. These information is stored in the database of the program and accessible to Customs officers throughout Thailand. There is no official fee charged for this.

Based on a tip off or other intelligence, a rights owner or its representative may advise customs about a suspected infringing shipment. Customs should inspect and advise the rights owner or its representative, again inspection is needed.

On 4 January 2021, The cabinet has approved a draft of Ministry of Commerce Notification prohibiting the import, export, and transit of trademark and copyright-infringing goods through Thailand. Additionally, IPR owners will now be able to directly report to the customs officer when suspecting trademark infringement or copyright infringement goods.

More detailed information of customs enforcement can be found in the Intellectual Property Rights chapter.

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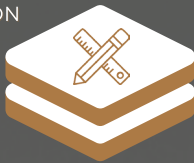
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