18 September 2014

General Prayuth Chan-ocha
Prime Minister of the Kingdom of Thailand
Government House
Bangkok Thailand

Dear General Prayuth Chan-ocha

SUPPORTING A COMPETITIVE ECONOMY IN THAILAND

The Joint Foreign Chambers of Commerce in Thailand (JFCCT) is the umbrella organization for the various foreign chambers of commerce and business associations operating in Thailand. There are currently 30 member bodies representing almost 9,000 companies.

The JFCCT brings to bear the experience of its members in order to propose and recommend positive developments and oppose threats, which could undermine the long term economic development in Thailand. This is done by dialogue and engagement with constructive, concrete proposals.

Over the last several months it became clear that a resolution to long term political deadlock would be difficult to achieve, and as a result, certain changes to the administration of the country have now taken place for the time-being. There was loss of life during this period, which was sincerely regrettable. It is now important to focus on what can be achieved moving forward.

The Thai business community and others have noted that major changes are necessary. A new constitution specifically provides for an interim legislative body and a National Reform Council. Changes in regards to political and social issues are for Thai citizens to discuss and agree upon; however, as foreign investors and stakeholders in the economy, the JFCCT has been asked to contribute on the topic of economic change, which we will gladly support.

The JFCCT and its members are here to stay in Thailand for the long-term. There are already a number of economic changes under consideration aimed at strengthening economic attractiveness; many of which have been part of the JFCCT dialogue for some time. The JFCCT offers its recommendations in twelve subject areas (attached) and looks forward to an on-going dialogue on such matters. We have also consulted with the EABC.

We would be pleased to discuss these matters at your convenience.

Yours sincerely,

Stanley Kang
Chairman

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Ministry of Finance
Ministry of Commerce. DTN, DITP
Ministry of Foreign Affairs
Ministry of Industry
Ministry of ICT ETDA, EGA
NBTC
Ministry of the Interior Bureau of Immigration
Ministry of Labour Dept. of Employment
Ministry of Land & Transport
Ministry of Sports & Tourism
Ministry of Education Office of the Higher Education Commission (OHEC)

Other Organisations
Board of Trade of Thailand
Federation of Thai Industries
World Bank Thailand
ADB Thailand
TDRI

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SUPPORTING A COMPETITIVE ECONOMY IN THAILAND

A. SUMMARY OF 12 SUBJECT AREAS

1. General business environment

The JFCCT shares a vision for the following objectives:

i) A trusted investment environment where the Rule of Law is paramount, laws are enforced with consistency, fairness and predictability and important institutions function with strength and integrity and where relevant, independence.

ii) An innovative economy where a liberalized and enhanced services sector makes a better contribution to innovation and productivity. Beyond the 'middle income' economy where solutions are sustainable and the importance of SME's is supported.

iii) Administrative procedures designed to achieve policy objectives efficiently, reduce time and cost and be consistently and transparently applied.

iv) Reduction of corruption so that it is no longer the expected or normal way of doing business, with real incentives to avoid corrupt practices. Removal of easy use of tools of corruption.

v) Openness to foreign investment, the free movement of skills. Revisions to foreign investment regulation to support this objective.

vi) Greater investment in R&D as part of being a skilled and knowledge economy

2. Infrastructure, Transport and Logistics

Recent decisions to support major transport infrastructure investments are very welcome news. Expanded dual track rail, roadways, etc. will bring wide support and major business benefits.

For rail & road infrastructure in civil engineering the introduction and acceptance of state-of - the-art international standards (e.g. European Standards issued by CEN,) will support Thailand in higher quality, longer life span and lower life-cycle cost for infrastructure. CEN standards for civil engineering are the worldwide best practice for sustainability of structures. Future maintenance and refurbishing costs will be significantly lower.

In addition, for improved safety and quality conditions we strongly recommend to install preventative, permanent, on-going maintenance programs for all rail and road infrastructures.

The world is engaged in 'smart city' visions and approaches. One useful starting point for the nation's capital as a smart city would be traffic management in Bangkok.

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In the aviation services sector, capacity at major airports needs addressing as well.

3. Special focus on enhancement and liberalization of the services sector

Many globally recognized organizations such as the World Bank, ADB, and TDRI have illustrated the importance and value of liberalization of the services sector. All have noted that Thailand is behind in this area. Avoiding the middle income trap is a key factor.

Thailand did well in liberalizing manufacturing. This is a success story. But the liberalization of services has stalled.

There has not been any agency with a specific remit to promote services generally. With the relocation of the Board of Investment of Thailand (BOI) it is hoped this will open some opportunities in this respect and may pave the way for an overall strategy for support for higher end services.

The mechanism in the Foreign Business Act for List 3 activities can be used to release from protection against competition various sectors, which are ready to compete.

4. Tourism

Tourism contributes close to 9% of Thailand's GDP plus about as much in ancillary income (relevant farm produce, etc.) with more than 2 million people directly employed and again twice as many using these services thereby creating wider impact. The sector is expanding in specialized areas such as medical tourism. Tourism-related technology is continually developed to support better experiences.

From time to time, over some years, the livelihood of the industry has been impacted by perceptions of instability in Thailand.

We believe that the fundamentals for improved growth of this sector are:

- Improving and expanding the major airports of Bangkok, Phuket, Samui, Chiangmai, Sattahip, etc.
- Further developed infrastructure in rail and roads
- Improving education in all aspect of tourism including vocational education
- Accentuate Thai culture and how this meshes with modern Thailand whether in food, art, health, etc.
- Involve international PR agencies to create a modern identity for Thailand based on Thai culture
- Build a cruise-line terminal for large cruise liners (similar to Hong Kong) to attract this lucrative segment of tourism
- More competitive cost offerings by way of electricity for hotels to be based on similar rates as industry

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The JFCCT, in conjunction with TAT, has run seminars on security and safety in the tourism sector.

5. Enhancing efficiency, skills and productivity through revamped Work Permit and Visa law, regulation and procedures.

The JFCCT has proposed for a long time major revisions to the Work Permit and Visa regime. Please see attached JFCCT's detailed submission dated 16 July on this matter.

6. Regional trade and investment – AEC economic integration; Regional HQ incentives

The JFCCT believes that the AEC is critical to Thailand's future. Thailand should be seen as taking the lead within the AEC for a number of reasons.

Thailand has signed a range of agreements, which together make up what is commonly known as the AEC. These include ATIGA (Goods), AFAS (Services), ACIA (Investment) and a series of MRA's (Labour). These are effectively now Thailand's treaty commitments to its ASEAN neighbours. Most of these have not yet been implemented locally in Thailand.

ASEAN Integration needs to be fast tracked in order to send the right signals to the international community that Thailand is still committed to doing the correct things internationally and regionally. This will assist in the international perception of Thailand at this time.

A major review of ROH incentives would be opportune. Tax is one dimension, others include availability of skills, the right soft and hard infrastructure to support trade in services (in particular), IP protection and a general welcoming of foreign participation in the economy and business.

7. ICT

The ICT sector in Thailand plays a vital role for the wider services sector. Telecoms in particular is a strategically important sector that enables and strengthens key economic processes in the economy. Where the ICT sector is well-functioning, efficient, effective and innovative it will have a positive multiplier effect on the economy as a whole.

As with other strategic sectors such as banking financial services and logistics, a well-functioning sector has a positive impact and multiplier effect on the economy overall. One key reason for this is that the user groups of these services are able to be more efficient, productive and innovative. Business users in Thailand have a right to expect world class, competitive, innovative and cost effective services. The industry structure and certain aspects of the industry in all such cases have not provided the standard and range of services, which they could and should.

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Short summary of ICT issues and recommendations

Item	What it's about
1	The strategic role of ICT has not been fully realised yet in Thailand, we need to evolve
2	Telecoms industry structure is critical and is currently sub optimal; SOE's need to develop; spectrum management needs continued transparency
3	Independence of the NBTC is important for investor confidence
4	Liberalisation of services, foreign equity caps, Foreign Dominance Notification, skills education and free movement of skills are all part of important contributions to the industry.
5	A trusted internet is an important business tool; amendments to the Computer Crimes Act and a data protection regime (see item 8) are important.
6	Creativity, innovation and availability of finance are key to a knowledge-based economy which recognises the value of SME's
7	Higher end IT services will stimulate innovation; support for advanced e commerce will help stimulate the sector.
8	A data protection regime will give greater trust in the economy and is a pre-cursor to open data services. Cross border aspects need to be included. This is an important ingredient in an Open Data regime.
9	Software piracy is rife; measures to reduce it are needed.
10	IPR in on-line context needs balance: ISP and data centres have limited ability to take action, legislation should reflect this. In a wider sense, BOI support for enhanced eCommerce is welcome.
11	Equipment standards need harmonisation; avoiding specific national standards where possible in favour of regional and global standards. Interoperability is important.
12	A single international gateway will not help Thailand's aspirations as a services hub and will have other negative consequences
13	Is government-run social media a value to ICT activity? – Identifying the objectives may help. This is different to a government portal which may be very useful for citizen and other users.
14	Government procurement could use some improvements in order to realise proper value from supply. Cloud policy needs better support.
15	eGovernment will have great benefits. See the detailed paper.

See separately published ICT policies referred to:

- eGovernment v 8.0 at 21 August 2014
- Skills / Competencies in the ICT sectors in Thailand, updated August 2014

8. Banking and Financial Services

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Thailand is witnessing rapid changes as a result of globalization and digitization. This is accompanied by the pressing need for liberalization in many sectors such as trade, investment, foreign exchange, finance, banking, insurance and other financial services. If Thailand is to be competitive, particularly within the ASEAN Economic Community (AEC) transformational changes are necessary for Thailand to realize the benefits from these important trends, particularly in the financial services and banking sector. A level playing field for international businesses operating in Thailand will be an important part of Thailand's transformation with in-built incentives for banking and financial services to be innovative, cost effective and competitive. Thailand needs to act in a timely manner on several issues to be a leader in ASEAN and beyond. We propose eight areas to be addressed:

1) Creating a digital friendly business environment
2) Increasing convenient access to non-branch banking channels for consumers
3) Provision of insurance brokerage services by International banks
4) Promoting the use of modern and convenient payment products
5) Liberalizing Thailand's banking and financial markets to bring more effective competition, innovation and overall value.
6) Making finance available on a cost effective basis to a wide variety of companies especially SMEs
7) Amending the 70/30 rule applicable to the deployment of resources by some international banks
8) Tax regime support to maintain increased Capital.

Financial services is regarded as a strategic sector in the economy. As with the telecoms and logistics sectors, a well – functioning, innovative, cost effective services sector has a positive multiplier effect on the economies which they serve. The 'dual role' of each such sector is important – an industry in its own right and a service to the rest of the economy. Thus key user groups – especially business users and of those, especially small business users, need to be able to access the benefits in order to realize this vision.

These changes need a coordinated approach amongst various concerned agencies including the Ministry of Finance, the Bank of Thailand, the Securities and Exchange Commission, the Office of Insurance Commission, the Consumer Protection Board, OSMEP and other relevant agencies.

9. Customs & Excise

Thailand's Customs and Excise laws are out-of-date, parts of these laws have not been changed in more than 80 years. They do not reflect international best practices. They impede investment, and are a deterrent to doing business in Thailand, and confidence in Thailand as a trading partner. Many know about all this. There has been some resistance to change for a long time. These reforms are needed:

- Changing Thailand's Customs and Excise laws to meet the international standards established by the Kyoto Convention

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- Becoming a signatory to the Kyoto Convention.

- Excise reforms for similar reasons.

The right reforms will encourage foreign investment in Thailand, improve Thailand's competitiveness and place Thailand in a much better position to play a leading role in the AEC and other free trade contexts such as EU-Thai FTA.

Also recommended are:

- Introduction of a National Single Window (NSW) for greater efficiency and transparency and working towards an efficient ASW (ASEAN Single Window).

- The effective ratification and implementation of the WTO Dec 2013 "Bali Package" by ASEAN member states, including Thailand, would be a positive step.

10. Education and Skills

Thailand's education system, with its emphasis on rote learning and passing tests, has received much commentary. Change is anticipated by and for educators and education authorities. The education system has to take into account the demand side of the labor market (i.e. students have to be prepared both in vocational training as well as in higher education) in order to be fit for their future careers. The growing mobility amongst AEC countries will lead to a more competitive labor market for which Thai students have to be prepared with up-to-date education and skills in demand.

Focusing on students, the emphasis should be on:

- reflective learning and active enquiry.

- challenging and questioning accepted truths.

- gaining confidence and practical insights through internships.

- nurturing creativity besides critical thinking.

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Focusing on teachers and principals, the emphasis should be on:

- holistic teaching skills (i.e. theoretical skills plus practical skills gained in the 'field' before starting to teach).

- continual development of headmasters to manage education facilities and enhance the teachers' calibre

- training by benchmark educators with practical as well as theoretical know-how.

- R&D of the learning system for the benefit of students.

Education forms the mindset and attitude of students with the acquired know-how and skills for their future careers.

The JFCCT has identified a number of specific concerns and recommends immediate, short- term and longer term reforms.

11. Broadening of the skills base – revisions to skilled and unskilled labour pool

The JFCCT recommends a major revision to enable recognition of unskilled labour, and also skilled labour. This is important for both the manufacturing and services sectors. Attached is JFCCT's submission of 15 July 2014 on these issues.

12. Energy

If Thailand is to sustain its strong economic growth, it will need to address the increasing gap between its energy demand and domestic energy supply resources. This is a critical challenge for the country's future development and means that energy security must be a focus for the coming years.

Secure, sustainable and clean energy supplies can be secured from a diverse set of opportunities by:

- Development of significant further conventional oil and gas resources through both license extension in existing concessions and full development of the Gulf of Thailand resources, including the Overlapping Claims Area;
- Secure a strong and stable alignment among national and international stakeholders on future energy strategy by joining the Extractive Industries Transparency Initiative (EITI)
- Active public policy to encourage investment in, and support development of, alternative energy sources;
- Enhanced energy efficiency to reduce energy intensity, and instil broader awareness of energy-savings behaviours, to manage demand growth;

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- A long-term vision for the build-out of smart energy infrastructure, including what is needed to import resources from abroad;
- Simplification of approvals process for energy related projects.

Active engagement between the Thai government and energy professionals in foreign and local business communities can effectively support these goals by providing investment, policy advice, and technology. Key members of the foreign business community stand ready to facilitate and support engagement and dialogue on these issues.

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B. DETAILS OF THE 12 SUBJECT AREAS

1. General business environment

The JFCCT shares a vision for the following objectives:

i) A trusted investment environment where the Rule of Law is paramount, laws are enforced with consistency, fairness and predictability and important institutions function with strength and integrity and where relevant, independence.

ii) An innovative economy where a liberalized and enhanced services sector makes a better contribution to innovation and productivity. Beyond the 'middle income' economy where solutions are sustainable and the importance of SME's is supported. SME's are the backbone of many economies. We note that availability of finance for SME's is a challenge. Particularly for the smaller companies. In the banking and financial services chapter of this paper are proposals to help realize the availability of finance for SME's.

iii) Administrative procedures designed to achieve policy objectives efficiently, reduce time and cost and be consistently and transparently applied.

iv) Reduction of corruption so that it is no longer the expected or normal way of doing business, with real incentives to avoid corrupt practices. A change of attitude is needed, through a change of business community mindset, enforcement of laws and education. Although with no enforcement or monitoring ability, JFCCT plays a role in education and promoting anti-corruption values at industry level and through collaboration with the NACC. JFCCT recently signed an MOU with the NACC to further enhance this collaboration. (Please see the separate document delivered with this submission).

A related aspect is the abuse of the defamation procedure. While defamation remains a criminal offence, it will continue to be open to abuse to put pressure on commercial partners. It has also been used a tool to facilitate corrupt payments. It is recommended that criminal defamation be ceased and a civil defamation regime, with safeguards, be implemented.

v) Openness to foreign investment, the free movement of skills. The Foreign Business Act (FBA) has a mechanism (albeit imperfect) in its List 3 for reviewing of industry sectors which should be open to competition. A later, separate submission which addresses this and recommended changes to the FBA in more detail. Skill mobility is underpinned by a revised Work Permit and Visa regime (see chapter 5).

vi) Greater investment in R&D is needed as part of being a skilled and knowledge economy. Greater R&D is a positive strategy and important for Thailand's development. Presently only approx. 0.25% of GDP is spent on R&D. The OECD countries are spending an average 2% on R&D and the US has spent in 2010 the highest amount of 405 Billion USD equivalent to 2.7% of their GDP on R&D. Japan and Korea are spending in the range of 3.7% of the GDP on R&D and also looking around closer to Thailand our neighbor to the south has spent three times as much on R&D than Thailand.

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A study why Thai companies are not engaging more in innovative activities showed that 43.6% of the respondents mentioned as the main obstacle the high cost of financing or unavailable financing as the reason of not spending more on innovation (banking in Thailand enjoys an oligopoly even though it is a strategically important part of the underperforming overall service sector), note the ease of doing business report by the Word Bank ranks Thailand 70th in access to finance). As the second reason for not investing in innovation 42.7% of the respondents mentioned the lack of knowledgeable and trained personnel (World Bank Thailand data). To overcome the roadblock of lack of trained personnel in the long term, both education and skills training and revisions to Work Permit and Visa are needed to support freer movement of skilled people. Some of this is beyond the immediate scope of BOI but for a variety of reasons, anything BOI can do to stimulate investment in education and up-skilling is surely a very positive thing.

2. Infrastructure, Transport and Logistics

Recent decisions to support major transport infrastructure investments are very welcome news. Expanded dual track rail, roadways etc. will bring wide support and major business benefit.

For rail & road infrastructure in civil engineering the introduction and acceptance of state-of - the-art international standards (e.g. European Standards issued by CEN, will support Thailand in higher quality, longer life span and lower life-cycle cost for infrastructure. CEN standards for civil engineering are the worldwide best practice for sustainability of structures. Future maintenance and refurbishing costs will be significantly lower.

On 29 July 2014 the NCPO approved the eight-year infrastructure plan totalling Bt2.4trn for roadways (48%), railways (20%) and MRT (22%). Public investment in Financial Year 2015 (October 14- September 15) is expected to be approx. Bt450bn.

Investment will start with bidding for the M&E system and O&M services for the MRT Blue Line extension (27km) and the BTS Green Line extension, Bearing-Samut Prakan (13km). SRT Red Line (Bangsue-Rangsit, 26km). Contract #3 may be delayed.

In the FY2015 we expect MRT's Green Line (Morchit-Koo Kot) Bt38bn, improvement of existing railway network Bt22bn, roads and bridges for Bt38bn.

For these projects, we recommend maintenance standards and practices be included.

The world is engaged in ***'smart city'*** visions and approaches. One useful starting point for the nation's capital as a smart city would be traffic management in Bangkok.

In addition, for improved safety and quality conditions we strongly recommend to install preventative permanent, on-going, maintenance programs for all rail and road infrastructures.

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Aviation

Aviation is a key economic contributor, and should see higher priority on the national agenda. It is a major contributor to tourism, one of Thailand's main economic pillars, but also generates other productive employment opportunities, consumer benefits and facilitates trade and investment. Government policy supporting the aviation industry will reap strategic benefits both in terms of taxes generated by the industry supporting public finances, and competitive benefits enabling Thailand to compete on equal terms with its ASEAN partners. Thailand has the potential to capitalize on its position in relation to aviation, but without government support there are likely to be roadblocks ahead.

Challenges facing the industry in Thailand involve infrastructure, capacity constraints, safety and security, financial competitiveness and legislation.

Infrastructure and Capacity Constraints

The major growth in air travel over the next few years is forecast to center on the Asia Pacific region; however, Suvarnabhumi International Airport (BKK) is already operating over its optimum capacity, and in order to benefit from future growth it is essential that the second phase expansion plan be implemented immediately. The current expansion of Bangkok International Airport (DMK) will provide some additional capacity, but it will not contribute to Bangkok's position as a major aviation hub, so rehabilitation at DMK should not, in our recommendation, be made at the expense of BKK's expansion.

Safety and Security

BKK opened with two runways, and these are in constant use to support current operations. Since 2008 AOT has had to constantly conduct maintenance operations, closing parts of the runways, taxiways and gate areas for maintenance as a consequence of deficiencies in the materials used in construction, and height of the water table beneath the airport. These closures are now a daily occurrence, and are not just inconveniences, but involve heavy expenses for airlines due to delays and added fuel burn, in addition to being a risk not only for aircraft, but also for ground service equipment and personnel. IATA has an Operational Notice in effect warning airlines of the potential risks.

At some point it seems inevitable that a runway will have to be completely closed for major maintenance, and for that reason it is imperative that a third runway be constructed immediately, not to handle additional capacity, but as an emergency facility to ensure that the airport is able to maintain safe operations. The need for a third runway has become so acute that to build it in a reasonable readiness time frame would mean having - at this stage – to bypass EIS procedures.

Financial Competitiveness

Bangkok enjoys an advantageous geographical position at the crossroads of Asia, and by attracting a large number of airlines it has created an excellent hub position between Europe and the Asian region, but in order to continue to attract airlines, and thus maintain its hub

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position, the cost of operating here must be competitive with operation to neighboring airports. Just like Bangkok, other regional airports have seen a decline in passenger numbers due to recent political unrest in Thailand, but whereas the response of regional competitors such as Singapore's Changi Airport has been to offer discounts from 1st June 2014 as incentives for airlines to operate to Changi, there have been no incentives offered for airlines to bring visitors back to Thailand. At the same time, while in general charges at BKK do not appear out of line with those of neighboring airports, airlines operating here find that there are additional charges at BKK that other airports include in the overall fees such as overtime payments for Immigration staff (even though BKK is a 24 hour airport), fees for ground power and air conditioning for aircraft, concession fees for ground handling services, lounge access charges, CUTE charges, etc.

A consultative process that results in fair and transparent airport charges can enhance the relationship between an airport operator and its customer airlines. In general, airport operators are increasing the percentage of revenue from non-aeronautical activities and some years ago AOT announced that it planned to achieve a 50-50 split between aeronautical and non-aeronautical revenue by 2015. In recognition of the contribution that airlines make to an airport's success through bringing in more passengers, helping to increase non-aeronautical revenue, many airport operators share the benefits with airlines through a single till policy, or at least a modified single till where a portion of the non-aeronautical revenue is incorporated into the calculation of airport charges.

APPS/PBRS (Advance Passenger Processing System / Passenger Baggage Reconciliation System) are in process of being implemented in Thailand, and this will bring Thailand in line with many countries implementing similar systems to enhance national security. However IATA recommends that national governments underwrite the expenses for these, since they improve national security, but it appears that fees per passenger / bag will be charged in Thailand. While IATA does not support this position they have advised that if they are implemented then airlines must be given one year's notice in order to include the amounts in passenger tickets, but AOT have many times said that they plan to implement it as soon as technically feasible, without acknowledging the airlines' need for one year's notice. We would recommend that notice be given and the charging of fees to airlines be reconsidered.

Aeronautical Facilities and Fees

Aeronautical Radio of Thailand (Aerothai) plays a major role in Thailand's aviation industry, both in terms of safety and financial competitiveness. Aerothai provides services not just to Thailand, but also to the region and their services like BOBCAT and MAAR provide much benefit to airlines. They have the potential to be the leading aeronautical service provider in the region, but they need Government support to underwrite the investment needed to equip their National Airspace Command Centre and for radar and ground installation upgrades to support developments within the region. This will not only enhance safety, but also help minimize fuel burn, which benefits both airlines and the environment. Airlines understand the "user pays" principle, but Aerothai must understand that airlines cannot pre-finance future borrowings for investment, and this must be reflected in realistic charges. Investment on this scale needs Government support.

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Legislation

Thailand is one of the very few major countries not yet a signatory to the 1929 Warsaw Convention nor the 1999 Montreal Convention (MC99). Ten years ago the DCA drafted the Thai International Carriage by Air Act which would have incorporated the provisions of MC99 into Thai law, thus paving the way for ratification of MC99, but it has still not been passed into Thai law. Airlines are concerned that this lack of legislation will disadvantage all stakeholders, including airlines, passengers, freight forwarders, Thai manufacturers and shippers, and the wider Thai economy, since other Governments in the region have ratified MC99.

MC99 establishes rules covering international carriage by air, including limits of liability for passengers, baggage and cargo. Without these rules there will be higher insurance costs in Thailand, contributing to higher supply chain/logistics costs than in China, Japan, Malaysia and Singapore, etc. with less fair and just compensation for Thai citizens who are victims of aviation accidents than for citizens of countries that have ratified MC99, while court cases and legal costs will be lengthier and more expensive for shippers in Thailand who make claims for damage, delay or destruction of cargo. This will definitely place Thailand at a disadvantage with the advent of the AEC.

The DCA support ratification of MC99 and recently held a meeting to review the wording of the Thai International Carriage by Air Act, which is now awaiting Government approval, at which time it should be possible to ratify MC99.

3. Special focus on enhancement and liberalization of the services sector

Many globally recognized organizations such as the World Bank, ADB, and TDRI have illustrated the importance and value of liberalization of the services sector. All have noted that Thailand is behind in this area. Avoiding the middle income trap is a key factor.

Thailand did well in liberalizing manufacturing. This is a success story. But the liberalization of services stalled.

There has not been any agency with a specific remit to promote services generally. With the relocation of the Board of Investment of Thailand (BOI) it is hoped this will open some opportunities in this respect and may pave the way for an overall strategy for support for higher end services.

In the 1980's students had difficulty in finding jobs, but through the right investment policies Thailand has been very successful in opening up the manufacturing sector and the BOI has played a vital role in this achievement. The automotive sector in particular is a success story and a showcase of how important the correct policies are in order to build up an industry cluster and to build a center of excellence.

Thailand is known as one of the most attractive places to set up a manufacturing plant and the promotional benefits extended by the BOI have helped to achieve this positive rating.

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Unfortunately this success story of the manufacturing sector has not been repeated in the service sector and Thailand has one of the most restrictive regulatory frameworks for entry in the service sector. The service sector is underperforming and has to be unlocked. Despite the open access for manufacturing, Thailand is ranked 85th in starting a business in the ease of doing business report by the World Bank. This highlights the shortcomings in access to the service sector.

Services related to manufacturing; the auto industry is a good example of the benefits of a cluster, as long as support is provided for related services.

Service sector liberalization is not just about allowing higher foreign equity limits, but we see it as:

i) Liberalizing foreign equity limits

ii) Free movement of skills (talent) – immigration and labour regulation (services are delivered by people)

iii) Sector specific changes and mandates – relaxation to restrictions on permits, licenses and other barriers to entry (mainly NTB's), mandate access in some cases

iv) Other sector-specific reforms (e.g. structural changes in the sector make it competitive and attractive for investment)

We believe that BOI policies are very helpful in providing higher foreign ownership limits and can also help by incentivizing certain activities (e.g. education and training) and in being a catalyst for undoing certain barriers, even if indirectly. The BOI has unlocked manufacturing in the past; now it is time to do the same for services.

Economic data shows that high service sector employment share but lower contribution to GDP. Productivity enhancements via liberalization and other measures are needed for the services sector.

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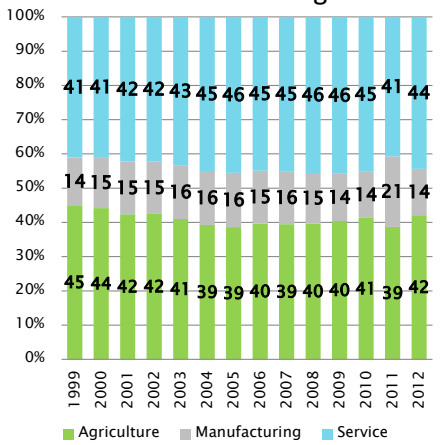
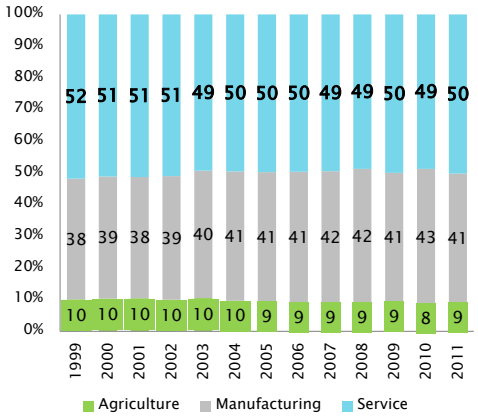
Service sector productivity needs improvement

The service sector employs 44% of the labour force compared to 14% for manufacturing



50% of GDP comes from the service sector compared to 41% from manufacturing



Source: NESDB

Services: Logistics and Related

Thailand has an opportunity to become a globally recognized service and logistics hub and, top international service providers should be allowed majority ownership in order to enhance and stimulate the sector and the contribution it makes to the economy. For logistics efficient and cost effective movements of materials and finished goods in most cases means that international operators desire end-to-end control over their business.

In the current world economic climate, cost and efficiency are even more important (particularly with the pay inflation kick – more of which below), therefore we should be attracting modern logistics service providers to set-up in Thailand to support industrial development properly.

The attached file includes an analysis of the logistics sector and the large benefits it can bring to goods sectors, assuming that the sector is effective and innovative, the logistics sector itself.

Logistics - World Bank

> "Logistics services have a dual role on countries' trade. On one hand, logistics services have a direct impact on trade in goods. High logistics services costs are a major barrier to trade, in particular for developing countries …. On the other hand, logistics services have become increasingly tradable services"

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4. Tourism

Tourism contributes close to 9% of Thailand's GDP plus about as much in ancillary income (relevant farm produce, etc.) with more than 2 million people directly employed and again twice as many using these services thereby creating wider impact. The sector is expanding in specialized areas such as medical tourism. Tourism-related technology is continually developed to support better experiences.

From time to time, over some years, the livelihood of the industry has been impacted by perceptions of instability in Thailand.

There is now a small rebound of business as of July 2014, but nowhere close to 2013 figures. As of October, the traditional start of the high season, forward bookings are improving until April 2015, yet the booking pace seems to be considerably lower than previous year. At first glance Bangkok hotels are at 20% lower levels than anticipated.

Travel warnings from most countries have been toned down or removed, yet many tourists are choosing other destinations due to perceived safety concerns. Our neighbouring countries have benefitted with large increases in incoming tourism into Indonesia, Malaysia, Vietnam, Cambodia as well as to Korea, Japan, UAE, etc.

Thailand's largest inbound market for 2013 was from China and Thailand was China's top destination in 2013 for its outbound tourist traffic. In 2014 China diversified its outbound business with Korea rising as the top destination followed by Japan, thereby pushing Thailand down to third position.

Business travel is starting to improve as the business climate is improving. Again growth is still not up to former numbers. Most conferences slated for Bangkok 2013 and much of 2014 have been moved elsewhere. Insurance liability and lack of confidence in holding large events have curtailed many large events. Some smaller seminars have started to return though.

Room supply keeps increasing, especially in Bangkok. This, combined with fewer tourists and business travellers, translates into poor profitability. Some lay-offs have been seen.

We believe that the fundamentals for improved growth of this sector are:

- Improving and expanding the major airports of Bangkok, Phuket, Samui, Chiangmai, Sattahip, etc.
- Further developed infrastructure in rail and roads
- Improving education in all aspect of tourism including vocational education
- Accentuate Thai culture and how this meshes with modern Thailand whether in food, art, health, etc.
- Involve international PR agencies to create a modern identity for Thailand based on Thai culture
- Build a cruise-line terminal for large cruise liners (similar to Hong Kong) to attract this lucrative segment of tourism

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- More competitive cost offering by way of electricity for hotels to be based on similar rates as industry

The JFCCT, in conjunction with TAT, has run seminars on security and safety in the tourism sector.

Taxi mafias are not helpful to tourism (nor to local citizens or businesses) and have caused reputational damage. Recent action taken to curtail the effects of taxi mafias are most welcome. A lasting solution is very much needed.

5. Enhancing efficiency, skills and productivity through revamped Work Permit and Visa law, regulation and procedures.

The JFCCT has proposed for a long time major revisions to the Work Permit and Visa regime. Please see attached JFCCT's detailed submission dated 16 July on this matter.

6. Regional trade and investment – AEC economic integration; Regional HQ incentives

(a) Importance of AEC to Thailand

The JFCCT believes that the AEC is critical to Thailand's future. Thailand should be seen as taking the lead within the AEC for a number of reasons. Implementing the AEC:

1. Secures customers for Thailand's key agricultural products
2. Encourages Tourists to utilise Thailand as a central hub for regional tourism, thus generating more income and focus on Thailand
3. Encourages use of Thailand as a manufacturing and logistics hub by ASEAN entities, thus generating income and focus on Thailand
4. Creates opportunities for expansion and growth for many of Thailand's SME's
5. Provides opportunities for Thai companies to employ skilled professional workers, and thus enhances their opportunities to:
    a. Expand their business
    b. Innovate new products and services
    c. Lower operating costs

6. Assists Thailand during major natural disasters, and allows Thailand to be of assistance to other ASEAN countries during their natural disasters, thereby assisting Thailand in ensuring regional stability and limit forced movement of groups of people, human trafficking and drug movements
7. Encourages Thai companies and individuals to become more competitive and therefore enhances Thailand's economic growth in the longer term

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8. Secures Thailand's access to energy supplies – specifically Gas, Coal and some Oil – without the AEC being in place, Thailand's ability to generate additional low cost electricity for personal, business, infrastructure and automotive areas is seriously diminished.

(b) Legal readiness

Thailand has signed a range of agreements, which together make up what is commonly known as the AEC. These include ATIGA (Goods), AFAS (Services), ACIA (Investment) and a series of MRA's (Labour). These are effectively now Thailand's treaty commitments to its ASEAN neighbours. Most of these have not yet been implemented locally in Thailand.

ASEAN Integration needs to be fast tracked in order to send the right signals to the international community that Thailand is still committed to doing the correct things internationally and regionally. This will assist in the international perception of Thailand at this time.

Some specific items that the JFCCT would like to recommend the Thai government fast tracks include:

1. Strategic decisions should be made to allow the implementation of AEC plans and treaties already agreed. A number of key issues remain unresolved, such as key concepts about the different treatment of ASEAN versus Non-ASEAN individuals and businesses within the various laws.
2. The 7 professional MRA's (Labour area) should be fast tracked and processes within the Labour/WP/Visa areas expedited. We believe that those ASEAN citizens coming into Thailand to work under these agreements should not need to be considered as "aliens" for the purposes of existing labour laws.
3. The Tourism MRA (containing 32 sub roles) should be expedited within the labour and immigration departments so that business operators and government employees can understand how this is to be applied and implemented.
4. The JFCCT would also like to discuss the creation of additional skilled and semi-skilled profession MRA's within the Labour area. Many factory operators are struggling to find sufficient workers in Thailand to undertake a range of needs. Skills such as electricians, plumbers and other technical semi-skilled roles are required.
5. Services Liberalisation such as up to 70% ASEAN ownership of services companies should be fast-tracked (original agreements showed some starting in 2008 – but this has been blocked by the use of "service packs" with meaningless categories) and the FBA altered to allow for this. Allowing the liberalisation for all foreign nationals would appear to be easier than creating a category of "ASEAN" people.
6. Clarification of how Thai companies can provide services across borders, or using short term movement of natural persons (service providing employees) to satisfy customer demand and needs is urgently required. Short-term Work Permits and Visas are required for ASEAN countries for these companies and Thai individuals. Thailand will need to operate a similar system. A common approach within ASEAN would be the simplest solution, but some changes to the Labour law and procedures may be needed. Linking Visas and Work Permits via a single window would alleviate significant problems for service providers.
7. Many standards and definitions need harmonisation – these should be addressed ASAP. Labelling of various products remains inconsistent across ASEAN. Thailand

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should take a leadership role as it has the most to gain from improvements in this area. This needs to be pushed through. For example, Thailand would benefit significantly within (and external to) ASEAN from having a standard Halal type labelling.

8. Double Tax Treaties should be agreed with all ASEAN countries so that Thai companies are encouraged to expand into ASEAN. The current system requires a Thai company doing business in another ASEAN country to pay corporate taxes in the other country, and then repatriate the funds back to Thailand – either as a company income (and pay corporate taxes here) or as Dividends (taxable at 10% in most cases). Double Tax treaties should be established such that taxes paid in one ASEAN country can be credited here in Thailand – this is standard practice for many countries today.
9. Customs procedures and border controls should be modernized to allow the movement of goods across ASEAN borders easier. There is still significant corruption within the Customs area that needs to be addressed, and if this was undertaken, many companies would look to use Thailand as a central hub for all shipping in and out of ASEAN.
10. Corruption in customs is difficult to address while defamation laws remain a criminal offence, and "truth" is not a direct defence – these laws should be changed to assist AEC implementation
11. Technical issues in transport and logistics (Myanmar to Thailand requires unloading, changing vehicles and reloading for example) need to be addressed. Thailand should be seen to be the facilitator and leader in this area as it has the most to gain from physical cross border logistics operations. Assistance to the CLMV countries may be required as an incentive, but establishing standards and practices would create the biggest opportunity for Thai based logistics providers to operate across the region.
12. Clarification of the ASEAN Investor protections under the ACIA should be agreed in detail. In Thailand the BOI for many years has provided privileges for manufacturers including 100% foreign ownership (for all nationalities). We have been informed that 100% ownership (by ASEAN citizens or all nationalities?) within the Agriculture, Fisheries and Mining industries. The business community needs clarification of the details and timeframes of such a change. If this is the case, then the Foreign Business Act, or BOI legislation (or both) will need amendments.
13. Various ministries (the MOC mainly) have indicated assistance is to be provided to Thai companies looking to expand into ASEAN. Urgent clarification of the details of such assistance is required so that business operators can factor this into their cost and business planning models.
14. The JFCCT has offered to provided assistance and input via working with the various government ministries and departments about the items listed above. We would be happy to take part in working groups and detailed discussions at any time.

(c) ROH incentives

A major review of ROH incentives would be opportune. Tax is one dimension, others include availability of skills, the right soft and hard infrastructure to support trade in services (in particular), IP protection and a general welcoming of foreign participation in the economy and business.

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7. ICT

The ICT sector in Thailand plays a vital role for the wider services sector. Telecoms in particular is a strategically important sector that enables and strengthens key economic processes in the economy. Where the ICT sector is well-functioning, efficient, effective and innovative it will have a positive multiplier effect on the economy as a whole.

As with other strategic sectors such as banking financial services and logistics, a well-functioning sector has a positive impact and multiplier effect on the economy overall. One key reason for this is that the user groups of these services are able to be more efficient, productive and innovative. Business users in Thailand have a right to expect world class, competitive, innovative and cost effective services. The industry structure and certain aspects of the industry in all such cases have not provided the standard and range of services which they could and should.

1. *Role*

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2. *Structure - telecoms*

The telecoms industry works best if well structured. The desired telecoms industry structure is quite well reflected in legislation – e.g. the Telecoms Business Act, Frequency Act, but an optimal structure have never been realised in Thailand. Thailand is almost unique in the world in not having evolved to an optimal or near-optimal structure. For example there is no organised, wide-spread wholesale market or mandated access at regulated rates to base infrastructure and services, and the evolution of the state-owned enterprises stalled almost a decade ago.

All operators should be on a level playing field with arms'-length licensing from a single regulator. The protection of incumbent operators and national champions inevitably hurts users and the wider economy which the industry serves.

For a long time special privileges have been given to the two main State-Owned Enterprises (SOE's) in the sector. As with all bodies of their kind, SOE's need to evolve to playing a productive role in the sector, for example by being fixed line wholesale provides and for TOT to continue with its role as a retail fixed line provider. Continued privilege support in our recommendation does not aid this evolution.

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The Frequency Act 2010 includes a long-debated compromise, which resulted in a timeframe to underpin this evolution. Changing it now in ways, which would allow further delay with this evolution will set the industry, and key user groups, back.

Historically the SOE evolutionary path in this 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
v) Injection of different financial targets and seeking out value-adding roles
vi) The reformation or restructuring of the SOE.

Thailand stalled at step (iii). The Frequency Act 2010 supported a way forward.

We may consider the varied development paths of British Telecom (BT), Telstra, Singtel, Telekom Malaysia (TM), and PLDT. 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 JFCCT, has written about this in May 2013 and at an all-day conference in July 2013 highlighted by two major examples the need for and benefits of such evolution. The document can also be found **here.**

ICT SOE
Development - ICT M

One stated reason for review of the Frequency Act is to ensure transparency and better returns for the now-postponed 4G auction. It can rightly be said that the 3G spectrum auction outcomes were in-line with regional practice, but some have felt that the 3G auction lacked competition. If changes are designed to maximise benefit to Treasury, we would note that the more that is sought via spectrum auctions in up front receipts, the less generally available for network and service investment. Specifically we recommend:

(i) The proposed change, which would require the use of SOE's for infrastructure (on the basis that they need support) is not in the interests of the industry, its users or the wider economy.
(ii) Extending existing SOE spectrum rights enabling them to compete with the private sector is also not in those interests.
(iii) All spectrum for commercial use should be allocated by auction.
(iv) The long term aim must continue to be direct licensing from the NBTC for all operators.

We strongly encourage a focus on a well-functioning, innovative competitive industry as a whole, rather than shoring up the welfare of existing arrangement with the SOE's. While price based competition has taken hold in 2G markets and 3G markets, there is little service and innovation competition. Further liberalisation to promote this type of competition is needed.

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An effective wholesale structure and market for broadband services are needed. Key issues needing attention are how an effective wholesale broadband market will be created, some issues concerning whether existing policy can meet overall objectives, the cost of implementing government policy, the source of the investment needed, making the investment attractive to the private sector with an overall aim of achieving a realistic target of a large percentage of the population for quality broadband services within a reasonable time and ensuring a competitive structure.

Great cognizance should be taken of international trends in ***broadband*** development. Having an existing State Owned Telco Enterprise (and an unevolved one at that) as the centrepiece of the nation's broadband infrastructure is not likely in our view to produce the best result. The re-monopolisation of broadband infrastructure and services is in our view not a healthy trend. It is well acknowledged in various reports that the state of broadband infrastructure and services lags many other nations and is an impediment to Thailand's competitiveness.

Such structures (e.g. being built in Australia and in operation in Singapore) or different approaches such as in Malaysia, where the former, but now evolved government monopoly provider, Telekom Malaysia Berhad (TM), which has won regional awards for its wholesale and retail broadband services, has obligations to roll out and provide broadband services based on a national plan. The new PPP Law should also afford some means of supporting development of broadband infrastructure.

We recommend the following principles be used:

i) A wholesale market for services should be developed immediately and not wait for development or deployment of a national broadband network (NBN), which would take some time.

ii) A PPP model for an NBN be investigated, where shareholders / contributors would be the SOE's, other infra owners, financial investors etc. with the SOE's not having a majority. Some government funding and soft loans (including possibly from regional development agencies) are likely to be needed. To ensure investor confidence, an independent manager of the asset owner is recommended. The new PPP Law which came into effect in April 2013 should support such projects. Risk sharing considerations are reflected in the new PPP law. The new law does need resolution of the arbitration issue; it is recommended that arbitration be allowed for government contracts.

iii) Infra owners can vend or lease in.

iv) Appropriate separation (e.g. structural or operational) as between infra owner and retail service provider needs to be determined. A range of wholesale services should be available at non-discriminatory, cost-oriented rates.

v) Facilities-based competition should continue and not be terminated.

The experience of Australia is important to note. The re-monopolisation of an NBN has come under such heavy negative feedback that the whole scheme was revised by a new government

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in order to make optimal use of existing infrastructure and wireless technologies. For Thailand we do not recommend re-monopolisation through mandating use of SOE infrastructure.

3. **Independence of a key institution**

The current administration in Thailand, the National Council for Peace and Order (NCPO), has obtained royal assent to an interim constitution which provides for an executive, a unicameral legislature (NLA) and a National Reform Council (NRC). The serious commitment to reforms and moves away from corrupt practices are well noted.

But some developments, in our recommendation, need revising as they would if not checked, have some long term negative consequences. It is well recognised that the independence of the regulator is a key factor in investor confidence and a directed industry will not produce the best results for the industry, its user groups nor the wider economy.

We recognise that apparent, formal independence of a regulator can conceal de facto dependence on government or business interests. However, such situations are not easy to document. Accordingly for full independence we look not only for formal independence from government and the absence of successfully prosecuted departures from impartial behaviour but also for a system of governance within the regulator which includes an element of independent directors.
Independence is generally understood in the industry to mean two things:

i) Independent of government (recognising that it is government which sets policy nevertheless); and
ii) Independent of any operator.

Experience has shown that there is a third element; the governance of the regulator. Precedents for this are:

a) Stock exchange listing requirement – at Stock Exchange of Thailand (SET) and elsewhere
b) Some other agencies in Thailand
c) Other regulators in the sector (e.g. Malaysia's MCMC)

A board which is fully comprised of executives will thus have more challenges in achieving an independent status. The Agency should consider having independent, non-executive directors on its board and the legal machinery necessary to support this should be explored.

A 'Superboard' has been appointed by the Senate to provide oversight. While this is a positive move, we maintain our existing recommendations.

4. ***Liberalisation of the services sector; Foreign equity caps***

Services sector
The services sector is the engine of growth and innovation. Out of the leading six ASEAN economies, Thailand has slipped in terms of commitments to liberalisation of the services sector and a re-focus on this important reform is required. Service sector liberalisation needs to be understood as not just being about relaxation of foreign equity limits (although that is a key

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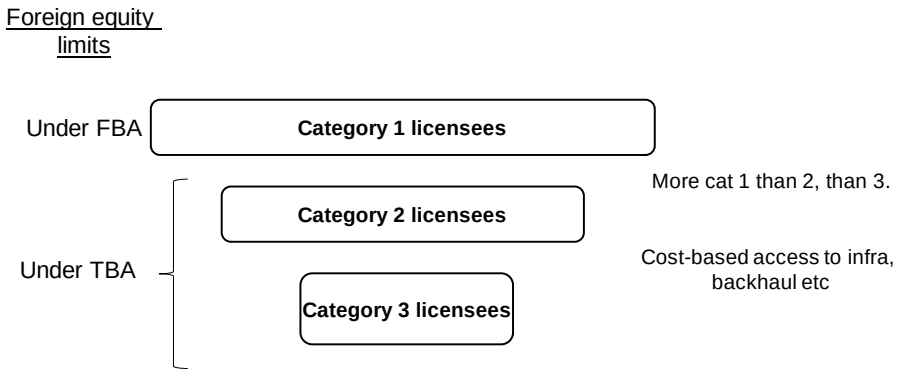
element, as AFAS shows). Rather, services liberalisation has a number of elements; all of which we recommend be pursued:

- Relaxation of foreign equity limits
- Facilitation of free movement by changes to Work Permit and Visa rules.
- Sector specific changes and mandates by way of relaxation of restrictions on permits, licences and other barriers to entry, and to mandate access to facilities – such as is done in GATS in relation to telecommunications, and in other FTA's with telecommunications chapters
- Other sector specific reforms or mandates (e.g. structural changes in a sector to make it competitive and innovative, such as recommended for the telecommunications sector)

We provide more detail about two of these aspects – ***foreign equity caps (and market access)*** and ***availability of skills.***

(a) Foreign equity limits

We recommend as a starting point the premise that 100% percent foreign ownership be allowed, with certain category 3 operators being exceptional cases to be assessed on a case-by-case basis. None of these structures rules out the involvement of local partners or investors, they simply propose that local equity participation should not always be a requirement. It is appreciated that legislative change will be needed in order to accommodate the recommendations for categories 2 and 3.



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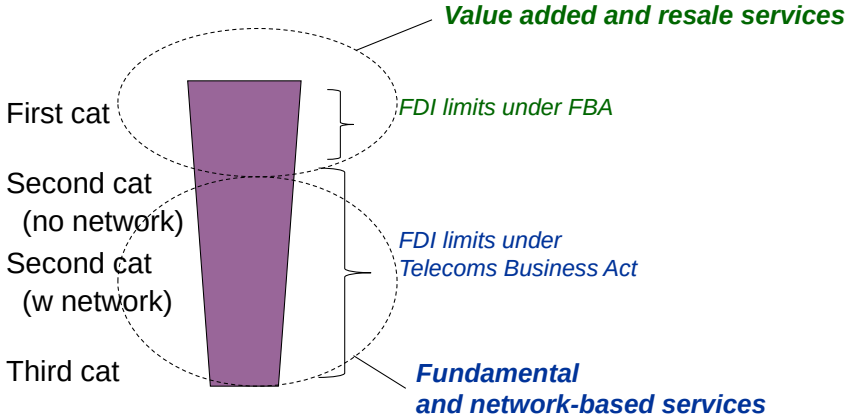
TBA Distinction between categories



Structure anticipated by the TBA is sound

The area of global managed services illustrates the need for potential 100% percent foreign equity. MNC's and larger corporations are the clients of such services and providers seek to provide a high standard, one-stop solution for seamless global coverage. Effective control of the entire operation will deliver better results. Restricting ownership makes Thailand a less attractive choice as a hub in this area.

(i) Category 1 and Category 2 operators

Category 1 licences allow for 100% percent foreign ownership. The Ministry of Commerce, which administers the Foreign Business Act (FBA), must approve such applications on a case-by-case basis. We recommend that such allowances be understood as normal, rather than exceptional, practice. The JFCCT made a detailed submission about the value of allowing for 100% percent foreign ownership for category 1 licences.

For category 2 (which falls under the Telecom Business Act – TBA), in our view, the industry would be well-served through allowing majority ownership, through to 100% percent foreign ownership. That would include both the 'network ownership' and 'no-network ownership' parts of category two.

(ii) Category 3 - fundamental national domestic infrastructure-based operator.

There is often some sensitivity about the levels of foreign ownership of the fundamental national domestic infrastructure-based operator. This might be because of such an organisation's role in fulfilling certain national social and economic policies – such as a Universal Service Obligation (USO) to provide services to all.

But such organisations must evolve so that they can become effective players in a competitive multi-operator market. FEL policy should ensure that the entity can

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effectively compete in a dynamic market, and not be concerned to protect the entity's current market position. Thus, some level of foreign equity needs to be contemplated.

Thus, for example, even in category 3, we might see a differential between TOT on the one hand and CAT on the other. If we use some examples, PT Telkom is majority Indonesian-owned (although its cellular arm is 35 per cent foreign-owned), whereas Indosat is foreign-controlled and majority foreign-owned. In Australia, Telstra is likely to see some foreign ownership restrictions, while Optus is foreign-owned and controlled.

We recommend that such category 3 operators be treated on an exceptional, case-by-case basis. Such operators might include TOT, EGAT Telecom, PEA, MEA, although their likely or possible role in a nationwide broadband network using a PPP model would require case-by-case consideration.

(iii) Category 3 – other operators

Ownership levels should allow, in our view, foreign majority ownership and control, right up to 100% percent, with the aim of stimulating participation by local companies.

(b) Foreign equity caps and other aspects of limiting foreign engagement: Foreign Dominance Notification

The JFCCT has made separate submissions and policy recommendations on foreign dominance since 2006, joined since 2011 by the EABC, along with many of Thailand's trading partners. The Foreign Dominance Notification had a long gestation period, from 2006 through to its passage by the NTC in August 2011 and revision by the NBTC in 2012.
The revised Notification, which became law in July 2012, widened the legal concept of 'foreignness' well beyond shareholding to almost every conceivable aspect of foreign connectedness (including shareholding, voting, advisors, banker relationships, mid to senior staff, equipment providers, paying dividends, financial accommodation or services, voting, board seats, use of IP and even customers if they are influential much of which is included in the Annex to the Notification). 'Dominance' simply means influence. If the NBTC determines that, based on three threshold criteria (holding more than or equal to 50 per cent of voting shares, having control of the majority vote at the shareholders' meetings and being able to appoint or remove more than or equal to half of the board of directors) the total effect of the influence level is over 50 per cent, the NBTC has powers to cancel the licence, order divestiture or make other correction orders. While the NBTC is to be commended for holding a review and public hearing to issue a revised Notification, the resulting law does not allay concerns about investor confidence or even basic fair competition. More recently the NBTC has said that the Annex should be treated merely as guidelines.

The Notification was objected to formally shortly after it came into force. Norway, supported by the EU, US and Japan, tabled the matter at WTO's Council for Trade in Services. The matter is on-going. Essentially the objection is to the enlargement beyond the basic criteria on which the GATS commitments were made.

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We recommend that ultimately the industry and economy would be well served if the Notification were ***revoked,*** and make these points:

(i) Investors in the sector need to make commitments in the order of multi-billions of baht. The ***investor uncertainty*** which the Notification brings will cause a risk-averse approach whereby the political and regulatory risk of investing in Thailand increases; the Notification fails to agree with normal investor practices in the sector.

(ii) It is a sound principle of investment in all sectors that some kind of non-passive activity be allowed. Investors in the telecommunications sector are ***not passive investors***; No-one has complained that the level of skills and useful talent contributed by foreign investors is too much.

(iii) All three current leading mobile operators have, over time, contributed to the market in Thailand the benefits of skills, processes, products and technology, which have been learned elsewhere in the world as well as in Thailand. All three have significant foreign investment. Such skills, regardless of their source, help make Thailand more competitive, and should be encouraged, not censured. This is not a zero sum gain; ***increased skills even in one or two players raises the bar overall***.

At a time when the effect of free trade agreements and framework agreements is to support increasing levels of investment in the service sector, the proposed rules go in the opposite direction; the same applies to the free movement of skills in such contexts. Given the dual role of the sector, the '***dumbing down'*** effect that the Notification will have is contrary to the recommendation of the World Bank and ADB, for example, to increase productivity by building skilled capacity.

(iv) The Notification has not helped to stimulate ***effective competition*** in the sector. By reducing the skills in the sector, effective competition is impeded.

(v) From an investment certainty perspective, the Notification ***undoes certain safeguards*** and predictable means of carrying on business. The Civil and Commercial Code, the Public Companies Act and the FBA allow foreigners to hold shares conferring voting rights in excess of 50 per cent and allow for a number of aspects of investment and operation which the Notification undoes; the revised FDN compounded this and brought ***Thailand's WTO obligations*** into sharp focus.

(vi) ***Other sectors are impacted*** by the Notification; thus financial advisors, systems and equipment providers, professional service providers, managers etc., if foreign, could negatively impact their own clients, customers or employer. This is contrary to global practice.

(c) Skills, Education and free movement:

ICT skills, as in many other sectors, are in short supply. The nature of the industry is global. Confining source pools to national boundaries makes it harder to find the right skills and limits innovation and all participants. National decisions need to go beyond the pace of AEC agreements.

The ***Work Permit and Visa regimes*** we believe need major changes to support availability and development of skills. We commend all initiatives to enhance the development of critical

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thinking skills in the education and training context, but Work Permit and Visa regulation for ICT skills in particular are in dire need of review. Recent detailed submissions by foreign business interest groups have been made on this topic. We do not recommend creating a local regime for the certification of ***IT skills***, rather using a competency framework. Please refer to the separate chapter on Work Permit and Visa issues and proposals.

We also do not recommend the use of Thailand-based certifications for IT functions. There are already various industry-based certifications etc. Not all sectors are the same and while MRA's in an AEC context may conceivably work for the medical profession, we don't recommend such an approach for IT services.

By way of example, Vietnam proposes a restrictive IT services decree. While this may protect local companies in the sector in the short term, it will not help with the user groups nor the economy overall, and we would not recommend this or a similar approach for Thailand.

Noting that:

- Both Vietnamese and foreign entities which "directly participate" or "are related to IT services" in Vietnam thus has a very broad coverage

- Investors in the renewing and refurbishing hardware business must apply for a license from the MIC, even though they have already been granted an investment license and the MIC was consulted and it consented to investment during the licensing process

- IT companies which are licensed to provide IT services must also register certain IT services

These requirements would make Vietnam unique among ASEAN countries and create significant barriers to doing business in Vietnam. Such a decree would deter many IT service providers from investing in Vietnam and would place Vietnam at a disadvantage.

By imposing certain requirements such as licensing and certification and impractical conditions (e.g. university degree) on consultants, the Draft would prevent many experienced foreign IT experts and consultancy service firms from providing advisory services in Vietnam.

5. A ***trusted internet*** is an important economic tool. Internet governance thus means that interception, surveillance for national security reasons should not undermine that trust. Our long standing recommendation is for revisions to law and policy, starting with policy and practices.

Over-played national security is often cited as the reason for support of restrictions on internet usage. Cybersecurity & social harmony are important but they do not justify the changes to the ITU Regulations, which would weaken a strong and effective internet. The internet needs to be trusted and continue to make positive contributions.

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Changes to ITU Regulations to allow for intrusion, censorship, etc. are not conducive to the continuation of positive contributions of the internet. The internet needs to be trusted in order to continue to be an effective business tool.

6. Thailand has made strides in ***creativity*** measures in IT and other areas, but overall programs have gaps. The availability of funding for SME's and start-up funding are key issues. It is encouraging to see security support for banks for SME lending and we would hope that banks would engage in making such finance available on reasonable and fair terms.

7. We also recommend a continued focus on enhancement of the services sector and the development of ***higher-end servic***es such as Business Process Outsourcing (BPO), Knowledge Process Outsourcing (KPO) and related activities.

8. ***Data Protection***

In the world of Big Data, investor, consumer and user confidence in the way data is collected, stored and applied is needed. This is not just about consumer protection, but gives confidence to the jurisdiction. Banning data movement across borders is not workable. Rather a regime which regulates cross border movement is needed. The APEC model is commendable and is a useful example. A complete data protection regime will give supports a better reputation for the regime.

Data Management / Data Protection legal regimes are needed; there are benefits in having a regional model which also provides a workable regime for cross border flows.

An important pre-requisite to an ***Open Data*** regime would be for a data protection regime.

9. ***Software piracy***

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

10. ***IPR in an eCommerce context***.

In the brick-and-mortar world, a shop or provider of goods or services (merchants) can be liable for infringing IPR's in the goods or services provided. In the on-line world, the on-line merchant may similarly be liable. Greater co-operation is sought from on-line merchants – being data centre operators and ISP's. Given the take up of mobile broadband, ISP's include mobile operators. But clarity is needed about the role of data centre operators and ISP's, which are not the same as on-line merchants. For ISP's (which merely provide access) the only real remedy is to block access to the site. Blocking orders which are validly obtained through a court process or are validly issued by a government agency may apply. Unfortunately too often blocking orders are issued without due process and for a range of reasons, some valid, somewhere any validity is not visible. In our recommendation it is also not appropriate to make the ISP

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responsible for a breach of IPR's where it is merely providing access to a site where a merchant may be infringing IPR's. Recklessly-issued blocking orders can result in economic harm, needless loss of business and damage to consumer confidence. For data centre operators, a similar approach should apply. Thus changes to the proposed revised Copyright Act are needed.

Elsewhere, enhanced standards for ***eCommerce*** are welcome. JFCCT has made a submission to the BOI for enhanced eCommerce to continue to be part of promoted activities.

11. ***Equipment standards*** (e.g. set top boxes, smartphones) and Type Approvals should be to published standards, which are regionally compatible, even if there are some Thailand specific features. There is slow progress on ASEAN harmonisation. The certifications of global labs should be respected. The feasibility of a national smartphone company (a separate issue) is doubtful economically.

12. A ***single international gateway*** would not be a positive step for attracting foreign investment. Reliable, world class communications infrastructure and quality services are very important.

13. A ***government – run social media*** may be seen to be more about control and acceptable messaging. We would recommend that such moves are not necessary.

14. ***IT Procurement: eAuction, Unlimited Liability, Software IP; source code handover***

We believe that improvements in these four areas will enhance value appreciation on the supply side. We will be happy to provide further details.

(i) ***eAuction:*** eAuctions can be a useful tool for commodity purchases. Multi-variant analysis (rather than just price) is necessary for the typical package of ICT hardware, software and services so that overall value for amount spent can be understood. We recommend judicious use of eAuction and a revised model which supports proper appreciation of overall value. A good test of transparency is that all parties can have confidence in the system.

(ii) ***Unlimited liability***: This is an unnecessary term in most supply contracts. Governments elsewhere have come up with solutions to address the issues by including caps on liability. Unlimited liability can be a deterrent to gaining real value.

(iii) ***Software Customs Duty / import duty on software***: Duty on software imports is hard to administer. We recommend 0% percent import duty.

(iv) ***Open standards and interoperability*** are important for systems which will function efficiently and harmoniously. See above under 'Equipment and Systems standards'

(v) ***Source code handover:*** the requirement, where it is practiced, to hand over the source code can be a deterrent to getting the best solutions

15. ***eGovernment*** in Thailand is at a relatively early stage of development

'e-Government' can be defined as the use of information technology to support government operations, engage citizens, and provide government services. e-Government can also include a wide range of governmental activities that are not services to users, such as intra-ministerial, inter-ministerial, and in the case of ASEAN and other external relationships, inter-

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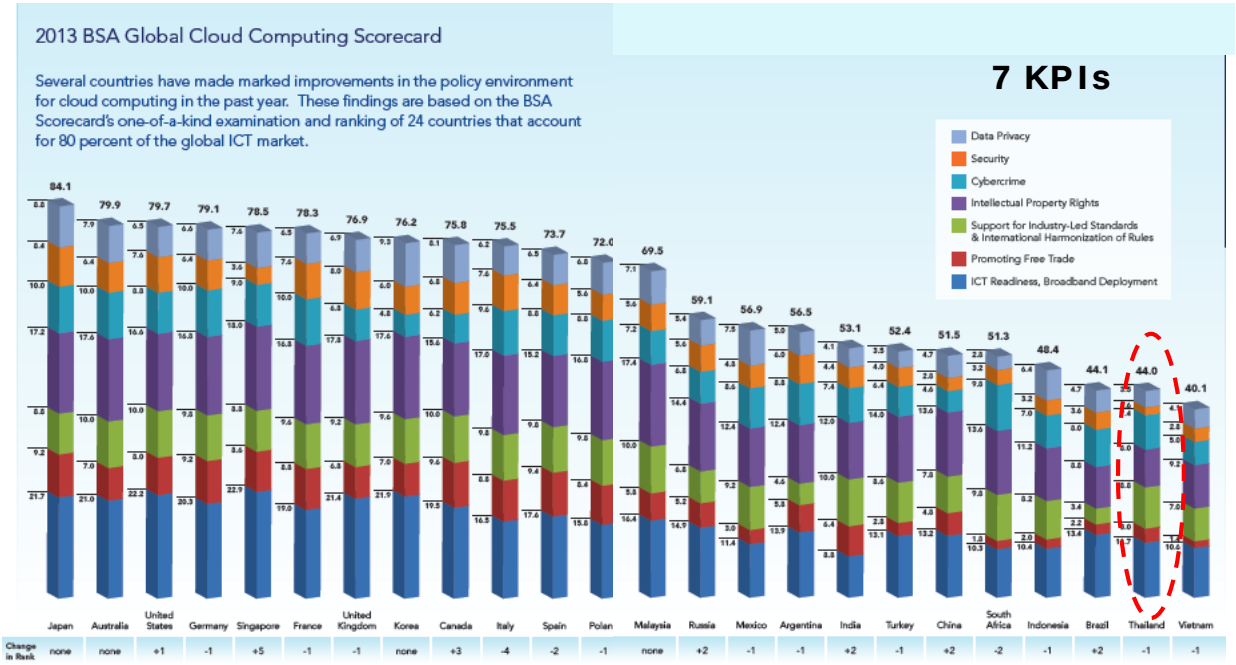
Governmental; as well as the essential use of technologies other than the Internet in the provisioning of Government services. It is important that non paper records be considered the primary form, rather than paper being the primary form with a digitised version merely being used to convey a process.

The EABC along with the JFCCT has developed a policy paper on eGovernment (current version 8.0). This takes into account Thailand's current position, various programmes and makes various recommendations which are shown in that paper which is submitted along with this paper.

Cloud based solutions lend themselves well to enterprise and government applications. Various policies and regulations that apply to data centres and shared infrastructure are needed in order to support the deployment of cloud solutions better. The Business Software Alliance (BSA) published a cloud readiness scorecard in 2013 covering the 24 economies representing 80% of the world's IT spend. These JFCCT proposals include many of the areas which would enhance Thailand's ranking.



24 economies representing 80% of the world's IT spend

Source: Business Software Alliance 2013

Short summary of issues and recommendations

Item	What it's about
1	The strategic role of ICT has not been fully realised yet in Thailand, we need to evolve
2	Telecoms industry structure is critical and is currently sub optimal; SOE's need to develop; spectrum management needs continued transparency
3	Independence of the NBTC is important for investor confidence

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Item	What it's about
4	Liberalisation of services, foreign equity caps, Foreign Dominance Notification, skills education and free movement of skills are all part of important contributions to the industry.
5	A trusted internet is an important business tool; amendments to the Computer Crimes Act and a data protection regime (see item 8) are important.
6	Creativity, innovation and availability of finance are key to a knowledge-based economy which recognises the value of SMEs
7	Higher end IT services will stimulate innovation; support for advanced e commerce will help stimulate the sector.
8	A data protection regime will give greater trust in the economy and is a pre-cursor to open data services. Cross border aspects need to be included. This is an important ingredient in an Open Data regime.
9	Software piracy is rife; measures to reduce it are needed.
10	IPR in on-line context needs balance: ISP and data centres have limited ability to take action, legislation should reflect this. In a wider sense, BOI support for enhanced eCommerce is welcome.
11	Equipment standards need harmonisation; avoiding specific national standards where possible in favour of regional and global standards. Interoperability is important.
12	A single international gateway will not help Thailand's aspirations as a services hub and will have other negative consequences
13	Is government-run social media a value ICT activity? – Identifying the objectives may help. This is different to a government portal which may be very useful for citizen and other users.
14	Government procurement could use some improvements in order to realise proper value from supply. Cloud policy needs better support.
15	eGovernment will have great benefits. See the detailed paper.

See separately published ICT policies referred to:

- eGovernment v 8.0 at 21 August 2014
- Skills / Competencies in the ICT sectors in Thailand, updated August 2014

ANNEX

FIGURE A – Glossary of some ICT related and other terms

AFAS	ASEAN Framework Agreement on Services
DIP	Department of Intellectual Property, in MOC
BSA	Business Software Alliance
ETDA	Electronic Transactions Development Agency
EGA	Electronic Government Agency

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FBA	Foreign Business Act
FTI	Federation of Thai Industries
FEL	Foreign Equity Limits
IEEE	US based standards body, publishing standards for WiFi for example (802.11)
ETSI	European standards body
GSMA	The GSM based industry association for mobile operators
ITIL	IT Infrastructure Library
itSMF	IT Service Management Forum
ITU	International Telecommunications Union (UN agency)
LTE	Long Term Evolution – the '4G' standard in the GSM world
Mbps	Mega bits per second (a speed)
Mpbs per MHz	A measure of spectral efficiency – speed per amount of bandwidth available.
MHz, GHz	Typically used to refer to wavelengths or parts of the spectrum
MB, GB	MegaBytes, GigaBytes (a size)
MRA	Mutual Recognition Arrangement
NBTC	National Broadcasting and Telecommunications Commission
NACC	NACC = National Anti-Corruption Commission
NESDB	National Economic and Social Development Board
NECTEC	National Electronics and Computer Technology Centre
NTC	National Telecommunications Commission, the predecessor to the NBTC
NSTDA	National Science & Technology Development Agency
SIPA	Software Industry Promotion Agency, under MICT
TBA	Telecom Business Act (as amended in 2006)
TCC	Thai Chamber of Commerce (one of constituent bodies Board of Trade)
TDRI	Thailand Development Research Institute
Thai IOD	Thailand Institute of Directors www.thai-iod.com
TRIDI	Telecommunications Research and Industrial Development Institute (part of NBTC)
TRIPS	WTO Agreement on Trade-Related Aspects of Intellectual Property Rights

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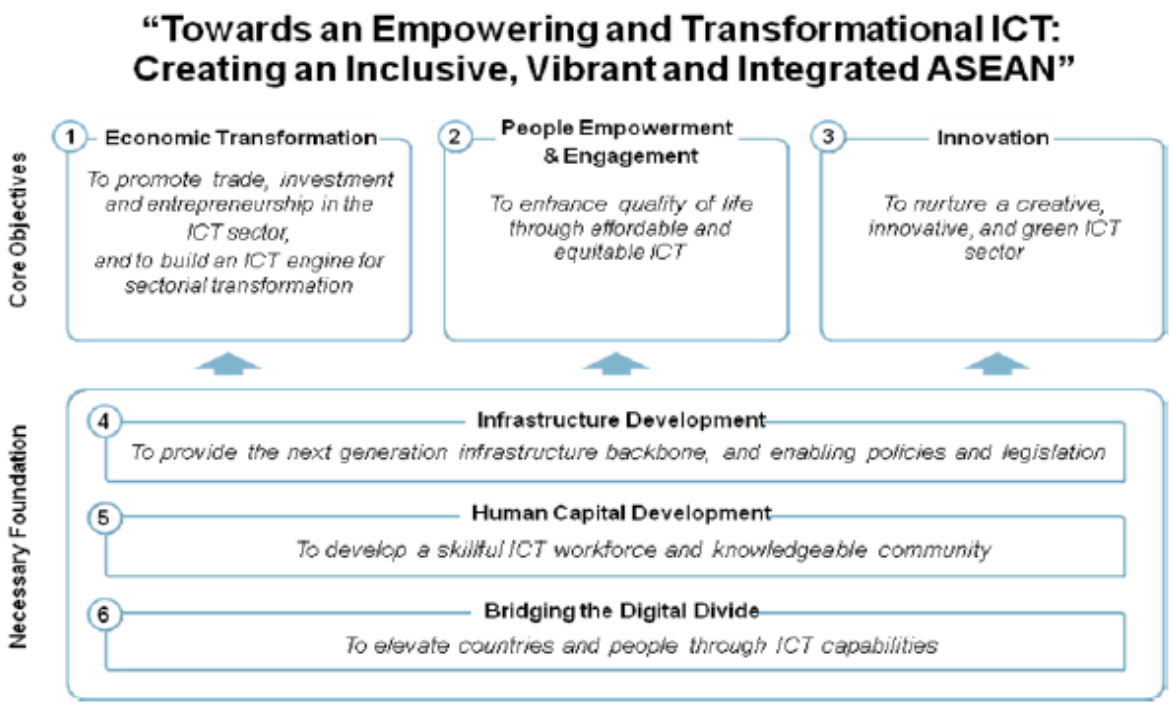
FIGURE B – Networked Readiness Index - NRI rankings noting current large differences in ICT situations in the region. The sub-indices on which each overall ranking is based make useful information for development.
Networked Readiness Index published by WEF & INSEAD (Global IT Report).

Thailand's improvement was largely due to the 3G licences issuance. Sub-indices on impact – take up – are weak in Thailand. Affordability is a strength.

ASEAN Member State	2012	2013	2014
Brunei	54	57	45
Cambodia	108	106	108
Indonesia	80	76	64
Laos	N/A	N/A	109
Malaysia	29	30	30
Myanmar	N/A	N/A	146
Philippines	86	78	86
Singapore	2	2	2
Thailand	77	74	67
Vietnam	83	84	84
Total economies	*142*	*144*	*148*

FIGURE C - The three Pillars and the three Foundations of the ASEAN ICT Masterplan



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8. Banking and Financial Services

Thailand's banking and financial services sector is not providing the level of innovation and value which the communities it serves might expect. It is hamstrung by regulation in many respects. We have identified eight areas where changes could usefully be undertaken.

Financial services is regarded as a strategic sector in the economy. As with the telecoms and logistics sectors, a well – functioning, innovative, cost effective services sector has a positive multiplier effect on the economies which they serve. The 'dual role' of each such sector is important – an industry in its own right and a service to the rest of the economy. Thus key user groups – especially business users and of those, especially small business users, need to be able to access the benefits in order to realize this vision.

These changes need a coordinated approach amongst various concerned agencies including the Ministry of Finance, the Bank of Thailand, the Securities and Exchange Commission, the Office of Insurance Commission, the Consumer Protection Board, OSMEP and other relevant agencies. We firmly believe that action on this agenda would help move Thailand forward in this era of global competition and allow it to be a leader within the AEC.

1. **Creating a Digital friendly business environment**

1.1) **Issue**: There is an urgent and pressing need for legislation followed by administrative action to move towards electronic processing of transactions versus the paper and wet signature model currently used. There are laws which support basic electronic versions (eg the Electronic Transactions Act) but these have not been built on. Digital signatures for example do not yet have a proper legal regime to support them. Developing further or enacting such laws will help remove concerns over the legality of electronic authentication/digital signatures thereby promoting their use. Wet paper signatures continue to be the norm for any form of agreement or consent evidenced interaction with banks which creates inefficiencies and places Thailand behind many other countries.

1.2) **Benefits to Consumers**: Using electronic authentication/digital signatures has many benefits to consumers. Consumers can execute transactions securely as they have to enroll and create their forensic identity by themselves. The prevailing easily available technology allows this to be done under multiple authentication layers within safe and sound security controls which ensures identity and personal information cannot be used or reproduced by third parties. Secondly, Consumers can conveniently access inexpensive electronic banking. It will remove the need for them to print and photocopy multiple paper documents/ to give multiple wet signatures for the same transaction or to travel to bank premises to do transactions. There will also be an improved audit trail and a significant reduction in space requirements for warehousing paper documents. A reduction in the consumption of carbon and paper would

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also have a positive environmental impact. Lastly, electronic authentication/ digital signatures open a wide window of banking access anywhere, anytime. Consumers can remotely complete any banking transactions, and upload/ download supporting documents without wet signature through smart phones and any electronic portable devices e.g. the iPAD which is what consumers, particularly younger consumers, are seeking in this day and age. A change towards electronic authentication/ digital signatures would also greatly benefit government agencies, such as those collecting revenue, as it would make time consuming paper based procedures more efficient to the benefit of the government and the consumer.

1.3) **Points to be Addressed/Requests**: We request the fast-tracking of legislative and administrative changes to allow the use of digital signatures. These legislative and administrative changes implemented as a priority would make Thailand more efficient and competitive to the benefit of the economy. It would also make Thailand a strong participant in the ASEAN Economic Community (AEC) Blueprint for unified digital signature.
Please also refer to the eGovernment paper in the ICT section about the change of mindset away from paper as the primary means to electronic equivalents.

2. **Increase convenient access to non-branch banking channels for consumers**

2.1) **Issue**: The current regulations treat deployment of ATM's (Automatic Teller Machines) and CDM's (Cash Deposit Machines) as "branches" for international banks with the same license constraints as for physical branches. This creates inconvenience for the consumers of international banks who would like to have more direct access to their banks through these channels. In line with a level playing field approach inherent to the AEC, we submit that international banks should be allowed to open ATM's and CDM's freely based their assessment of customer need. Clarification is also separately required to ensure that a bank officer meeting a client at their home, office or a regularly visited location like a shop can access the bank system directly on their IPAD or other mobile digital instrument to process applications for a product, service or information request. This meets customer service requirements in a digital era. There is currently an interpretation that any such access may be counted as an "electronic branch "under the constrained license norms for physical branches of International banks.

2.2) **Benefits to Consumers**: Consumers want to be able to access financial institutions as well as new products and services in an efficient way. This means being able to access ATMs in locations such as shopping centers while shopping or accounts on digital devices. As digital devices become even more common, particularly amongst younger consumers there is an expectation that financial institutions provide services on them and that those services are provided 24 hours and 7 days a week. Changes to the ATM and CDM regulations and clarity on other digital services will help banks meet the expectations of consumers and improve the overall efficiency in the economy and for those travelling for business or leisure.

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2.3) **Points to be Addressed/Requests**: Reclassification of ATM and CDM deployment as well as the ability to provide online straight-through accesses for banking transactions on smartphones or electronic portable devices e.g. IPAD. These changes will help provide alternate channels for access besides branches and help level the playing field between local banks and international banks.

3. **Insurance brokerage services to be provided by International banks**

3.1) **Issue**: Local banks can freely and directly solicit customers for insurance products which they have brokered but foreign banks cannot. This is because the brokerage license necessary for this activity is currently restricted to Thai Banks. International banks would like to be able to provide the same service as local institutions to enhance choice and increase competitiveness in the market.

3.2) **Benefits to Consumers**: Insurance is a critical product for full range of financial life planning. Thai consumers should be able to have access to a better range of products from alternate insurance partners for these important products. For this to happen, international banks need to be able to apply for broking licenses. International banks will follow all the respective regulations, and require that staff attain respective training and licenses as required.

3.3) **Points to be Addressed/Requests**: We request amendment to the Insurance Act to allow International banks to apply for brokerage licenses so that they can solicit customers for insurance products.

4. **Promoting the use of modern and convenient payment products**

4.1) **Issues**: In preparation for the AEC in 2015, it is crucial for the Bank of Thailand to review Thailand's financial payments infrastructure. It will be important for Thailand to have modern, well- developed infrastructure that facilitates payments domestically and reduce restrictions on across borders transfers for consumers and businesses. Good examples are the need for increased promotion of the use of electronic payment means such as debit cards, SMART Debit, mobile banking, debit cards plastic card alternatives, etc. Additional to the ease of payment, the information flow of transactional data must be improved to promote confidence in electronic banking; currently clearing system does not capture enhanced data to go with the transactions. Also all inter–bank payment mechanisms (including over the Internet) must be freely available to all Banks (Thai and International) without any restriction to promote a healthy banking industry and to allow all consumers to get the maximum advantages/benefits. Many foreign banks operating in Thailand do not provide the same innovative products which they provide in other markets.

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4.2) **Benefits to Thailand**: A modern infrastructure and diversified payment products will help reduce the transaction costs, increase efficiency, and thereby promoting spending for consumers and ultimately upscale Thailand's payment system. Businesses, particularly Small and Medium Enterprises, will increasingly be connected to consumers engaging in e-commerce, stimulating growth in the economy. A well-functioning payment infrastructure will also help enhance competitiveness to the financial sector, positioning Thailand in the forefront among ASEAN countries at the onset of AEC in 2015.

4.3) **Points to be Addressed/Requests**: Major regulators, i.e. the Bank of Thailand and Ministry of Finance, need to work closely with major local banks and others able to provide financial services such as mobile payments, and mobile money, that are currently the market takers, to ensure proper practice, institute technological advancement framework, and more importantly to avoid practices that will hamper our financial infrastructure progress, liberalization and innovation. Market leaders must assist to promote the use of electronic payment products, mobile payments and mobile money better to utilize a country clearing system that would strengthen the financial sector and the economy as a whole, and also allow for new market entrants from non-traditional banking sectors.

5. Liberalizing Thailand's financial markets to bring more effective competition, innovation and overall value.

5.1) **Issue**: While Thailand continues to be one of the most preferred locations in ASEAN as a manufacturing / production center, its financial markets are lagging. It will be difficult for Thailand to become an ASEAN financial center if the current situation continues. While already a regional manufacturing hub/center for many multinational corporations (MNCs), foreign exchange (FX) control, tax, and Board of Investment (BOI) regulations discourage MNCs from considering Thailand as their regional treasury/financial centers. Even many large Thai conglomerates are increasingly opening up accounts in Singapore and moving parts of their treasury operations there. With Thai Baht (THB) invoicing allowed by the Bank of Thailand (BOT), significant flow has been shifting offshore and dealt with out of regional treasury centers, mostly in Singapore but increasing in Malaysia. Thailand should try and tap into regional treasury operations in ASEAN. Innovations in small business and consumer services lag.

5.2) **Benefits to Thailand**: With a more convenient FX dealing process consistent or better than those offshore, and solutions to address tax disadvantages (compared to those of Singapore and Malaysia), Thailand could become the preferred location for regional treasury/financial centers of many MNCs. That means their finance, accounting, funding and FX hedging operations will be done from Thailand. The skills of those in the banking and finance industry will be lifted in the provision of this value-added service. The financial sector in Thailand would also grow. Ultimately this could lead to substantial employment opportunities, particularly for new graduates in economics, accounting, and finance.

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5.3) **Points to be Addressed/Requests**: We suggest the BOT liberalize FX control to promote FX transactions with "onshore" financial institutions. The de-regulation / liberalization should not only continue to ensure complete control and monitoring, but should also strive to retain the most valuable parts of the financial service industry value chain in Thailand – making it most convenient to operate their financial operations onshore. Redundancies of documentation and reporting requirements as well as complex approval process need to be addressed. Opening up channels which ultimately create offshore supply and demand of THB should be reviewed to ensure consistency in making the onshore activities as convenient, competitive, and efficient in order to promote the same level playing field. Those include enabling THB invoicing for non-residents, allowing THB intercompany loans to offshore affiliates without adequate control to roll over the hedge offshore once loan maturity is amended, offshore investment where the operating accounts could be offshore and thus any associated hedging activities could be offshore, etc. While many believe that a free market is ideal, there are examples of economies that prosper and whose financial markets have developed and grown significantly in recent years with selective deregulations, balanced with appropriate control and monitoring as seen in Singapore, Malaysia, Korea, etc. Furthermore, less favorable/redundant tax treatment on lending and borrowing activities within the group companies engaging in centralized treasury/financial operations should be addressed. In addition, we encourage joint effort between the Revenue Department, the Bank of Thailand, and Board of Investment to work toward overcoming tax and Foreign Exchange Control impediments with the right incentives to be considered by Board of Investment (BOI) to urgently enable Thailand to compete to become the preferred AEC Treasury/Financial Center for multinational corporations with factories and operations in the region.

In addition, allowing for mobile banking by recognising that innovations are often realized by non-traditional banking businesses (such as telcos) is important.

6. Making finance available on a cost effective basis to a wide variety of companies especially SMEs

6.1) Issues

In the start-up arena, it is often the case that 'made-in-Thailand' innovations are not realized in Thailand due to lack of availability of finance. Angel funding is often only successful if tied to family, series A VC is hard to come by and security or collateral requirements are onerous. More mature SMEs find obtaining finance difficult and it comes with onerous conditions.

6.2) Benefits to Thailand

There is a large range of benefits on which Thailand misses out. Innovations which were born in Thailand are often realized overseas (e.g. Singapore of Hong Kong) as that is where the

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funding is available. Financiers usually like to see the intellectual capital (including IP) based in the same jurisdiction as where the funding is done.

The ability of SMEs to grow and branch out overseas would also mean that profit and business growth can be pursued more effectively.

6.3) Points to be Addressed / Requests

The recent government decision to underpin loans to SMEs by making security, collateral or guarantees available is most welcome and shows what can be done.

The SME Bank's charter and processes could be revised so that it is better equipped to serve SMEs efficiently and more flexibly, without onerous conditions.

Availability of funds to companies with majority foreign ownership should not be ruled out. That the company is in Thailand and doing business in Thailand that should be enough.

7. Amending the 70/30 rule applicable to International Banks deployment of resources

7.1) **Issues**: For many decades, international banks have had to meet requirements of the "70/30" regulation. This rule stipulates that at least 70 percent of total domestic deposits and borrowings by international banks be used for granting loans or other forms of credit extension domestically. The 70:30 rule is codified in the relevant banking licenses for the international banks investing in Thailand. The requirement is not, however, being administered evenly. Only 11 banks that first entered Thailand are still bound by this requirement. The two latest new comers are not subject to this encumbrance. Some international banks are, therefore, at a large disadvantage relative to local banks and other international banks.

7.2) **Benefits to Banking Industry**: Removal of this stipulation would provide the relevant banks with greater control over their financial and risk position, and as a result enhance their ability to protect capital or build capital organically. The latter is an important prerequisite for effective credit support to the Thai economy by international banks through relevant economic cycles. Removal of the 70:30 rule for international banks would also contribute to a further harmonization of the regulatory rules under which various industry participants operate and ensure a level playing field.

7.3) **Points to be Addressed/Requests**: We request the Bank of Thailand review this 70:30 rule to ensure consistency in regulation and a level playing field for all institutions.

8. Tax regime support to maintain increased Capital

8.1) **Issue**: The current revenue code (Section 70 bis) dictates that any profits remitted outside of Thailand are subject to a 10% remittance tax. Further interpretation of this rule has

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been applied to increases in registered capital whereby unremitted profits maintained in Thailand and later converted to registered capital are also subject to the same 10% remittance tax.

8.2) **Benefits to Thailand**: Encouraging foreign entities to both invest and grow their businesses in Thailand is fundamental to the country's growth and establishing its leadership among AEC countries. Encouraging businesses to retain profits in the country by converting to registered capital without further tax would not only support growth but also help to ensure businesses have sound and robust capital structures supporting the stability of the economy.

8.3) **Points to be Addressed/Requests**: We request the Revenue Department to consider not requiring the application of remittance tax to convert unappropriated profits to registered capital.

9. Customs & Excise

(a) Summary

Thailand's Customs and Excise laws are out-of-date, parts of these laws have not been changed in more than 80 years. They do not reflect international best practices. They impede investment, are a deterrent to doing business in Thailand, and confidence in Thailand as a trading partner. Many know about all this. There has been some resistance to change to a long time. These reforms are needed:

- Changing Thailand's Customs and Excise laws to meet the international standards established by the Kyoto Convention
- Becoming a signatory to the Kyoto Convention.
- Introduction of National Single Window (NSW) for greater efficiency and transparency
- Excise reforms for similar reasons.

The right reforms will encourage foreign investment in Thailand, improve Thailand's competitiveness and place Thailand in a much better position to play a leading role in the AEC and other free trade contexts such as EU-Thai FTA.

(b) Customs Reform

Many sections of the Customs law remain unchanged since being introduced more than 80 years ago, resulting in an out-of-date Customs system.

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In June 2011, the World Trade Organization (WTO) upheld a ruling against Thailand in a Customs Valuation case filed by the Philippines. The ruling identified several systemic problems with Thai Customs, including:

- lack of transparency and fairness
- lack of prompt judicial review, and
- discriminatory customs valuation and taxation.

This ruling was the first WTO ruling on Customs Valuation and Judicial Review and emphasized that changes were urgently needed for the Royal Thai Customs laws and processes to meet international standards.

(i) Changes to Customs Law

Recommended is a full update of the law in its entirety to meet the international standards established by the *International Convention on the Simplification and Harmonization of Customs Procedures* (as amended) ("the Kyoto Convention").

Thailand should become a signatory of the Kyoto Convention.

The Kyoto Convention established modern concepts, practices and procedures for customs administration, which results in greater efficiency, transparency, and trade facilitation.

The sections of the Custom law that are the most problematic to the business community are the penalty regime (Section 27), reward sharing scheme (Section 102 tri) and the interpretation of customs valuation (Section 2, implemented in accordance with the Ministerial Regulation).

In 2009, two very welcome amendments which addressed reform of the reward and penalty scheme, were introduced to Parliament. Neither was passed.

Penalty Regime and Reward Sharing Scheme:

Thai Customs penalty regime and reward sharing scheme are out-of-step with other international Customs authorities and domestic revenue departments (Thai Revenue Department and Thai Excise Department) because:

1. The current law does not differentiate between inadvertent underpayment of duties and more serious offenses such as smuggling.

2. Non-compliance with the Customs law is considered a criminal vs. civil offence.

3. Penalty fines are excessive at 4x (four times) the duty payable and not linked to the seriousness of the offence.

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4. The reward scheme provides for direct payment of up to 55% of the amount to both the Customs officials and informer, thus presenting a system which is open to abuse.

5. Penalties can be assessed dating back 10 years, which is not consistent with the Revenue Code requirement maintaining transaction documents for 5 years.

6. Burden of proof is placed on importer rather than the Customs Department.

An amended Customs law should have the objectives and requirements to establish

- A transparent system which clearly distinguishes civil vs. criminal offences. Most developed countries have systems which support informed compliance and reasonable care and best practices. Many countries have decriminalized inadvertent underpayments of duty, and made it a civil offence with appropriate penalties.

- The current reward system linked to specific customs cases should be abolished. Reward systems should be implemented which focus on overall performance and structured as bonus payments rather than focus on individual cases. A reformed system should not be open to abuse.

It is acknowledged that some positive steps and attempts towards reform have been taken, which include:

- The 2009 regulation that allows for advance duty classifications and valuation rulings on imports. The regulations on advance binding rulings could usefully be made law, in order to have the power and applicability of a statute.

- The 12 March, 2013, Thai Cabinet approval of the Office of the National Anti-Corruption Commission (NACC) anti-corruption measures for reforming customs' incentives and reward sharing system.

- The Thai Cabinet's decision, on 19 July, 2013, to assign the Ministry of Finance to revise the penalty regime, in particular with regard to the notion of intent, and expedite the reward scheme revision, according to the recommendations put forth at the July 18th public-private sector meeting,

The willingness to engage in constructive dialogue is well appreciated. However, it is hoped that the changes proposed and discussed would be forthcoming.

(c) Excise Reform

The Thai Excise tax system has been relying heavily on an ad valorem tax structure based on costs. Such a system has been known to create issues such as difficulties and transparency in identifying products' costs, increases in market shares of lower priced products encouraged by accumulative tax increases under the ad valorem tax structure. These issues directly undermine

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the key objectives of a good excise tax system (i.e. revenue generation and promotion of public well-being).

Modernising the excise tax system to bring it in line with international best practice is recommended, specifically:

- Where it is necessary to maintain an ad valorem tax structure for certain products/services, it is important that the value for tax base purposes is clearly defined.

- A drastic increase in excise taxes may hamper both revenue and public health goals as there could be a change in consumer behaviour. For example, in other countries, large excise tax increases often results in an increase in smuggled and counterfeit products as consumers look for cheaper alternatives.

- The full AEC impact in time will further interlace ASEAN economies and provide additional incentives for businesses to invest in ASEAN. Although, excise tax is a domestic tax, when making changes to the excise tax regime, the Royal Thai Government should consider the best practices of other ASEAN countries. A regional study of excise systems would highlight the opportunity to reduce compliance costs for businesses in ASEAN and also demonstrate the practical impact of different systems and rates on the movement of excise goods across borders.

(d) National Single Window (NSW) and ASEAN Single Window (ASW)

Thailand's contribution to the development of the ASW is well-regarded. An early deployment of NSW will greatly assist with efficiency and transparency.

(e) Trade Facilitation agreements

The effective ratification and implementation of the WTO Dec 2013 "Bali Package" by ASEAN member states in including Thailand would be a positive step. Trade Facilitation measures included:

- **Publication of Laws, Regulations and Procedures** (Article 1); incl. via the internet and in particular with regard to import, export and transit procedures
- **Opportunity to comment and receive prior information on new/amended laws and regulations** pertaining to the movement, release and clearance of goods (Article 2)
- **Provision for Advanced Rulings** (Article 3); with a notification in writing, setting out the relevant facts and basis for the rejection will have to be issued when the case may be
- **Appeal or review procedures** (Article 4); including the right of administrative and judicial appeal on Customs related matters (e.g. Customs Rulings and decisions).
- **Fees and charges imposed on or in connection with importation and exportation** (Article 6); required to be limited to only the approximate costs of the services rendered by Customs, with info on the rationale, responsible authority and payment mode.

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- **Tighter measures on customs penalties** (Article 6); including measures to avoid conflicts of interest and refrain from the creation of incentive program for the collection/assessment of penalties.
- **Adoption of measures relating to the release and clearance of goods** (Article 7); which may facilitate customs clearance processes, incl. pre-arrival processing, risk management-based system to expedite the release of low risk consignments, electronic payment facilities, release of goods prior to determination of customs duties, taxes, fees and charges, provide additional trade facilitation measures for authorized operators ("AEO").

We encourage Thailand to include these measures as Category A commitments (i.e. implemented immediately upon the agreement's entry into force) upon the ratification of the Trade Facilitation Agreement.

10. Education and Skills

Thailand's education system, with its emphasis on rote learning and passing tests, has received much commentary. Change is anticipated by and for educators and education authorities. The education system has to take into account the demand side of the labor market (i.e. students have to be prepared both in vocational training as well as in higher education) in order to be fit for their future careers. The growing mobility amongst AEC countries will lead to a more competitive labor market for which Thai students have to be prepared with up to date education and skills in demand.

Focusing on students the emphasis should be on

- reflective learning and active enquiry.

- challenging and questioning accepted truths.

- gaining confidence and practical insights through internships.

- nurturing creativity besides critical thinking.

Focusing on teachers and principals the emphasis should be on

- holistic teaching skills (i.e. theoretical skills plus practical skills gained in the 'field' before starting to teach).

- continual development of headmasters to manage education facilities and enhance the teachers' calibre

- training by benchmark educators with practical as well as theoretical know-how.

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- R&D of the learning system for the benefit of students.

Education forms the mindset and attitude of students with the acquired know-how and skills for their future careers.

On the skills front, Thailand continues to be in danger of being stuck in the middle income trap. Locally sourced skills, and locally applied skills with additional overseas education and training are relevant, especially, with the opening up of labor markets in the AEC. The level of skills also supports growth and overseas expansion by Thai companies and Thai citizens taking up more jobs overseas.

The JFCCT has identified a number of specific concerns and recommends immediate, short term and longer term reforms.

Additionally:

The proposal to make the Office of the Higher Education Commission into a Ministry of University Affairs has some merit in terms of enhancement of the calibre of universities.

Promotion of businesses, BOI promotion for training and education is important. Properly accorded promotion of businesses doing education and skills training to others or in-house should be available. Brining greater productivity and innovation to the economy can be stimulated by encouraging training and education. Looking around ASEAN we see for example that Singapore has the Productivity and Innovation Credit (PIC) with a 400% tax deduction or a cash grant. While comparisons like this are not always fully valid, at least they provide an idea about an approach.

11. Broadening of the skills base – revisions to skilled and unskilled labour pool

The JFCCT recommends a major revision to enable recognition of unskilled labour, and also skilled labour. This is important for both the manufacturing and services sectors. Attached is JFCCT's submission of 15 July 2014 on these issues.

12. Energy

If Thailand is to sustain its strong economic growth, it will need to address the increasing gap between its energy demand and domestic energy supply resources. This is a critical challenge

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for the country's future development and means that energy security must be a focus for the coming years.

Secure, sustainable and clean energy supplies can be secured from a diverse set of opportunities by:

- Development of significant further conventional oil and gas resources through both license extension in existing concessions and full development of the Gulf of Thailand resources, including the Overlapping Claims Area;
- Secure a strong and stable alignment among national and international stakeholders on future energy strategy by joining the Extractive Industries Transparency Initiative (EITI)
- Active public policy to encourage investment in, and support development of, alternative energy sources;
- Enhanced energy efficiency to reduce energy intensity, and instil broader awareness of energy-savings behaviours, to manage demand growth;
- A long-term vision for the build-out of smart energy infrastructure, including what is needed to import resources from abroad;
- Simplification of approvals process for energy related projects.

Active engagement between the Thai government and energy professionals in foreign and local business communities can effectively support these goals by providing investment, policy advice, and technology. Key members of the foreign business community stand ready to facilitate and support engagement and dialogue on these issues.

These challenges are a priority for the Royal Thai Government's policy agenda of enhancing competitiveness and achieving sustainable development.

If Thailand is to maintain its strong economic growth, and benefit the opportunities arising from deepening regional integration, it will need to address three major energy challenges: (1) securing sustainable, affordable and clean energy supplies; (2) enhancing energy efficiency to manage demand effectively; (3) building smart infrastructure to ensure wide, equitable and efficient access to energy. We focus on the first two in particular. Future prosperity in every sector will depend critically on the country meeting its growing energy needs.

1. Securing future energy supply

Thailand's strong economic development and emergence as an upper middle income country has been impressive. This success has required growing amounts of energy. From 1990-2010, energy consumption grew at an annual average rate of 4.4%, increasing by over 2.3 times during this period. However, from 2011 to 2012 alone the domestic energy demand growth rose to 7.4%.

Such growth will require significant additional sources of energy. In the next 20 years, if there are no new sources of energy, no energy conservation, no energy efficiency improvement measures and no significant reform of the industrial structure and transportation system, the Ministry of Energy expects Thailand's energy demand under the business-as-usual (BAU) scenario to increase from 71,000 ktoe*/year in 2010 to 151,000 ktoe/year or about 2.1 times in 2030 or a whopping 195,741 ktoe by 2035, accounting for an annual average growth rate of

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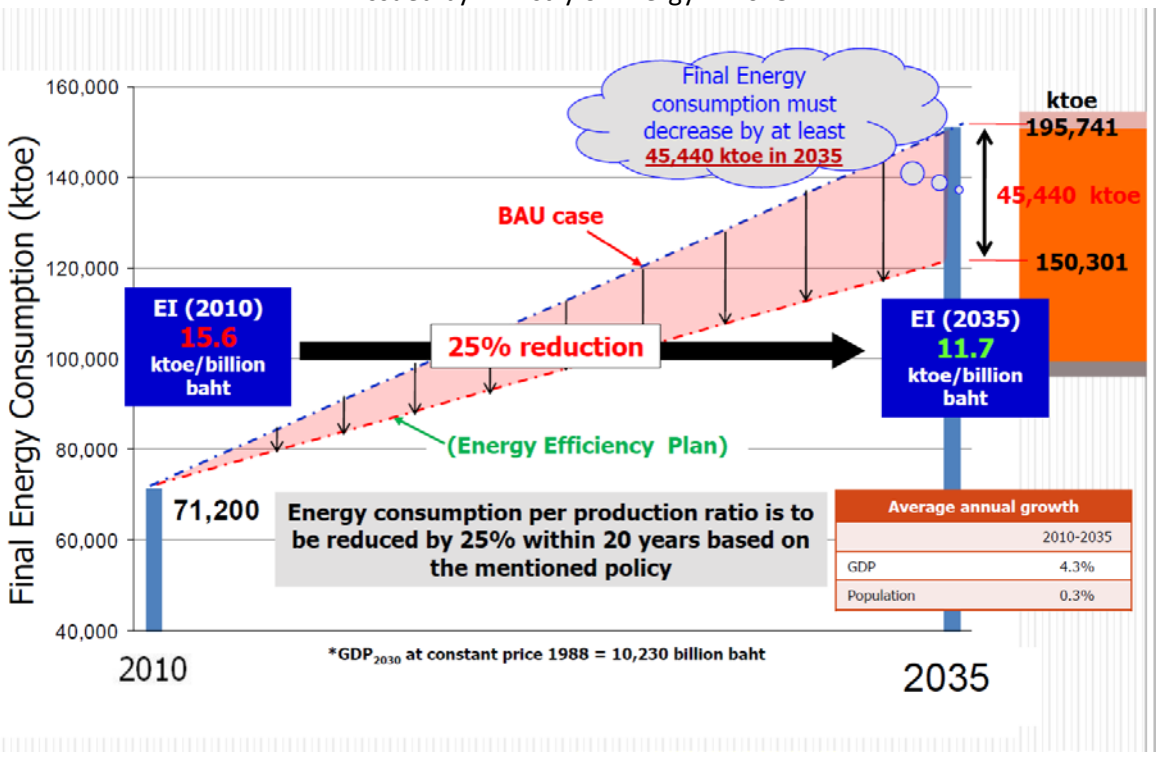
3.9% to 2030, under the assumption that the GDP will grow at an annual average rate of 4.2% over the period to 2030 or 4.3% over the period to 2035. Industrial and commercial demand will increase at a higher rate than other sectors. Greenhouse gas emissions will increase accordingly. Active planning to maintain a balanced, diverse portfolio of secure energy supplies will be needed to meet this growing energy demand.

Figure 1: Thailand's energy consumption in the past and projected future demand under BAU case – issued by Ministry of Energy in 2013



The mentioned policy is a policy of the Ministry to reduce energy consumption by 25% per production ratio. EI refers to Energy Intensity Value (how energy efficiency in utilised in monetary value terms.

Natural gas and oil are the primary sources of Thailand's energy supply, comprising 40.8% and 35.8% of total energy consumption respectively in 2012. In 2012, renewable energy, coal and hydropower followed quite significantly behind as Thailand's sources of energy supply at 9.9%, 7.6% and 5.7% respectively.

Figure 2: Comparison table of Sources of Energy supply – from Ministry of Energy
NOTE: categories as published by the Ministry are different as between 2012 and 2013

Source	2012	2013
Natural Gas	40.8%	46%
Hydro	5.7%	
Hydro & Imported		2%
Coal	7.6%	11%
Lignite		5%
Renewables	9.9%	

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Source	2012	2013
Oil	35.8%	
Petroleum Products		36%

'Hydro and Imported' in 2013 means local (Thai) and Laotian hydro power. As the categories are different, definitions may vary and thus some categories are not comparable.

Imports of all sources account for over 60% of Thailand's primary energy demand Dependence on foreign external energy sources is especially marked in the case of oil, where 78% of domestic supplies are imported.

A focus on the economic development of the remaining hydrocarbon resources in the Gulf of Thailand and other prospective areas will provide opportunities to enhance future oil and gas production. Even in the best case, however, Thailand is likely to be significantly dependent on foreign oil and gas imports. To maximise security of future energy supply, Thailand should also aim to develop its oil, gas and renewables industries. Energy efficiency and the development of alternative energies can help strengthen the overall robustness of the National Economy for this scenario.

Thailand's gas supplies are particularly important for the economy, providing the feedstock for two-thirds of power generation. Domestic sources currently account for 80% of total gas supply. It is however expected that production of local gas supplies has already peaked, and will decline unless full development of additional and significant remaining potential of the Gulf of Thailand, including in the Overlapping Claims Area, effectively takes place. Without continued high levels of investment, gas supplies will fall sharply from 2017 with a forecast decline from 2017-24 of 49%. Assuming a GDP growth rate of 3.7%, the total projected gap between gas demand and supply by 2024 will be 3,950 mmscfd**. Thailand has significant additional domestic oil and gas resources whose development can reduce the looming and inevitable supply gap. This will require significant further continuous investment in current major projects. Thailand can deepen its close and productive economic relationship with foreign trading partners by addressing the issue of licence extension for these projects in a timely way. An early resolution of this issue, in line with international best practice, would enable Thailand to meet up to 35% of the projected gas supply gap from its own supplies. In due course, full development of the additional and significant remaining oil and gas potential of the Gulf of Thailand, including in the Overlapping Claims Area, can provide important further energy resources to the Thai economy.

As the cleanest hydrocarbon fuel (producing less than half the emissions of coal), gas has an important role to play in environmental management. Securing further supplies will ensure cheap and reliable feedstock for Thailand's power, petrochemicals, industrial and residential sectors. It would further protect the international competitiveness of key exports. Thailand is strongly encouraged to develop other alternative sources of power to meet rising energy consumption, at a competitive price compared to neighbouring countries.

Active development of alternative energy sources can also play an important role in securing clean and sustainable future energy supplies. Renewable energy should be another priority area

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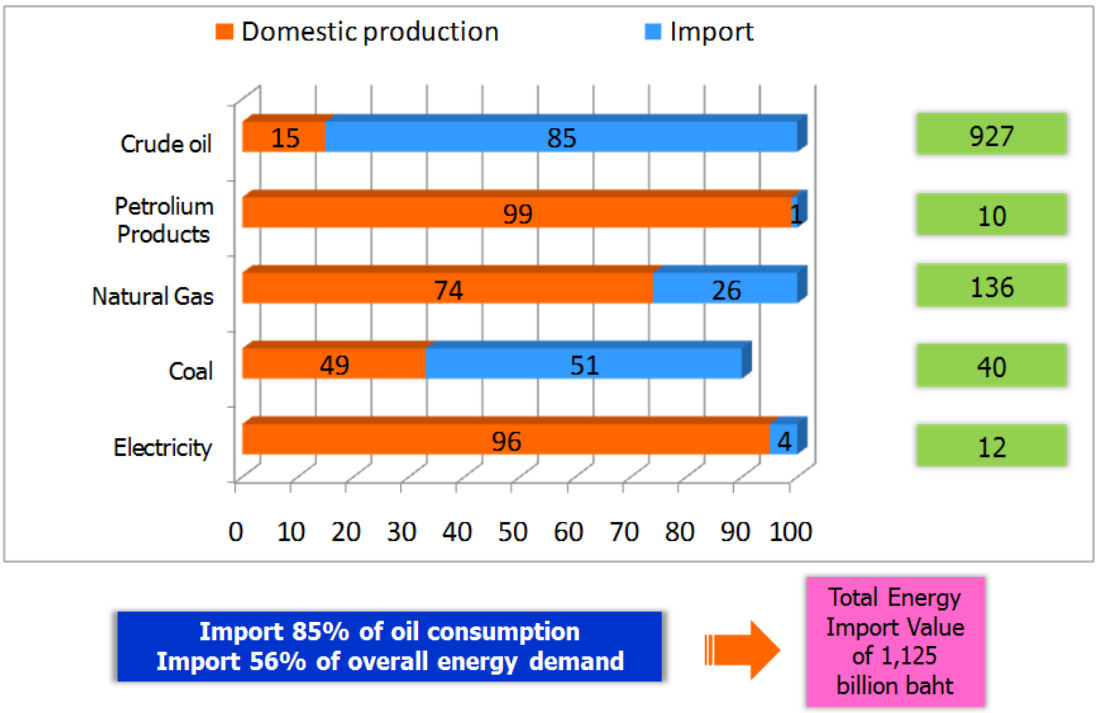
for investment, especially solar energy, wind energy, micro hydro, biomass, biogas and waste/garbage.

Figure 2: Thailand's domestic production and import of energy in 2012



Source: Ministry of Energy

By a Power Development Plan (PDP 2011-2030) and a Renewable Energy and Alternative Energy Development Plan (AEDP 2012-2021), prior Thai governments have set a target of increasing the renewable energy share from 7,413 ktoe in 2012 to 25,000 ktoe in 2021, or 25 percent increase of total energy consumption over that period. Key objectives under the AEDP include: strengthening the country's energy security; to promoting renewable energy projects at the community level as part of integrated green community; encouraging domestic production of renewable energy technology/industry; and strengthening competitive capability of Thailand's renewable energy technology in the international markets. A similar kind of approach may feature in revised plans in the future. Figure 4 is thus just an illustration.

Public policy has an important part to play in promoting renewable energy on a much wider scale and improving its accessibility. State support is needed to drive demand and reduce the cost of clean energy. Given Thailand's climate, solar power and other alternative energies should become an important source of Thailand's energy mix. The choices made by the government, businesses, and individuals in the next few years will have a major impact on the way the future unfolds. This highlights the need for businesses and governments to find new ways to collaborate and foster policies that promote the development and use of cleaner energy.

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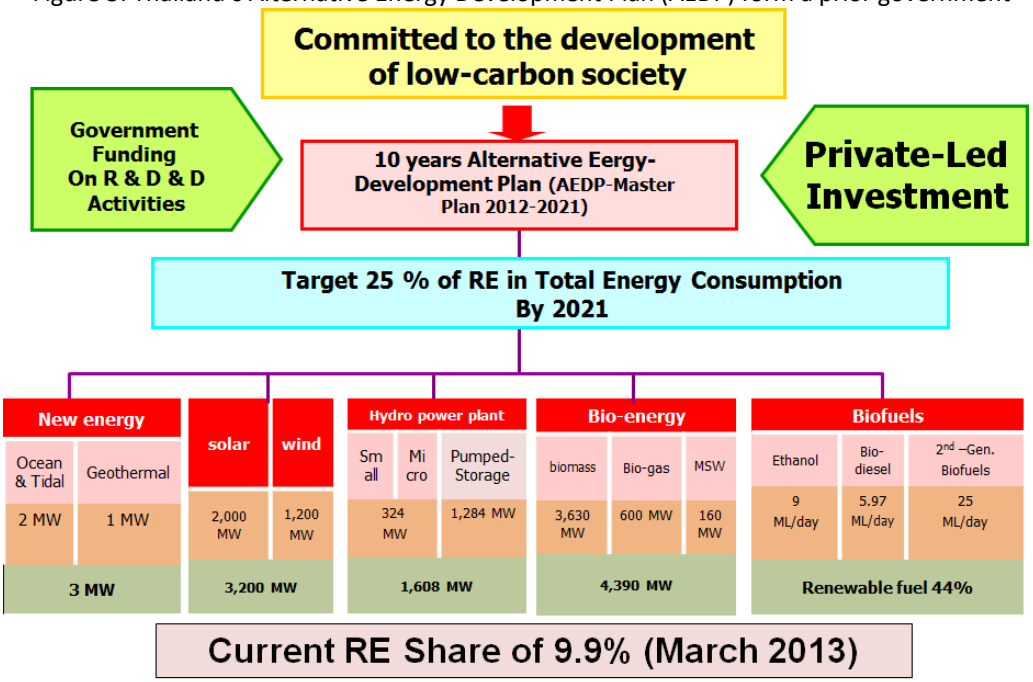
Figure 3: Thailand's Alternative Energy Development Plan (AEDP) form a prior government



Source: Ministry of Energy

The formation of the ASEAN Economic Community (AEC) will intensify both competition and opportunity from the ASEAN region. It is therefore especially important that Thailand maintain a balanced portfolio of energy sources to meet rising demand. Given its strategic location in the region, Thailand also has the opportunity to become a hub for energy trade in a number of different sectors, including oil, gas, electricity and biofuels. Central to achieving this will be the expansion of Thailand's energy infrastructure, such as its gas pipeline network, as well as its connections with its neighbours, as through the Trans-ASEAN gas pipeline. For Thailand to overcome all these energy challenges will requires a robust strategy and strong leadership to striking the optimal balance between economic growth, environmental sustainability and energy security.

To secure a strong and stable alignment among national and international stakeholders on future energy strategy, demonstrating transparency will be important. Thailand can make strong progress by joining the Extractive Industries Transparency Initiative (EITI), an international-best practice regime for governing reporting of revenue flows from natural resources. Over sixty countries are already members, including several in the Asia-Pacific region.

2. Enhancing energy efficiency

Trends in demography globalisation, rapid urbanisation, climate change, increasing domestic demand and energy security create unprecedented challenges for business. The efficiency of the entire energy chain needs to be improved to shape a sustainable future. To ensure the country's energy security, Thailand not only needs to pursue a sound policy of energy utilisation and diversification but also to reduce of its energy intensity. Meeting its targets for a new energy mix under the PDP and AEDP requires taking an inclusive, collaborative approach, in which policies are shaped taking into account relevant interests and concerns of all stakeholder groups

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and local communities. Promoting behavioural change through coherent energy literacy to improve the country's energy efficiency will also be central to achieving this. It is important that the public understand the true costs and challenges of achieving energy security, and the implications of government targets and strategies for their everyday lives.

The efficient allocation and use of resources in the energy sector can best be achieved by an open, flexible, transparent, competitive market-based system across all parts of the energy value chain, including a level playing-field for downstream activity.

Thailand would do well to implement ***a wholesale local energy supply structure with competition in a retail supply market*** above certain levels of consumption. This would also place Thailand well in terms of readiness as a trading hub.

Simplification of approvals process for energy related projects will also realise greater value in such projects.

NOTES

*ktoe = Kilotonne of Oil Equivalent (a unit of energy, not power). 1 toe = 41.84 gigajoules.

Fuel oil 1Tonne = 0.96 toe
Liquefied Petroleum Gas (LPG) 1Tonne = 1.08 toe
Coal 1Tonne = 0.62 toe

Hydro (primary) 1 GWh = 220 toe
Electricity 1 GWh = 86 toe

** mmscfd = million standard cubic feet per day

Recommendations

The following summary recommendations are proposed:

A. Optimise oil and gas development through international partnerships

Ensure continuity of investment for exploration and production in oil and gas, especially in the Gulf of Thailand, through effective policy, simplification of permitting requirements and deepening of co-operation with foreign investors.

B. Demonstrate transparency in the energy sector

Seek early membership of the Extractive Industries Transparency Initiative (EITI)

C. Promote clean and renewable energy on a wider and more inclusive scale

Lower investment cost by implementing incentive schemes. Simplify the requirements / licences for returning surplus energy to the public grid. Facilitate financing solutions for clean energy solutions not only in the industrial heartland but also in environs

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D. Focus on best practice in energy efficiency

Raise awareness of energy efficiency, and adopt international best practice, to realise energy saving potentials in industries like waste water treatment plants, PET bottling plants, car industries, Industrial Estates and many others. Also highlight investments in energy recovering solutions in manufacturing plants, using latest technology and energy saving solutions.

E. Develop a long-term vision for the build-out of smart energy infrastructure, including what is needed to import resources from abroad

Build smart energy infrastructure to ensure wide, equitable and efficient access to energy. An optimal mix of local and import sources will be required to create a portfolio of supplies with different modes of transport at the overall lowest average cost through scale and operational excellence.

F. Design and develop a local wholesale market with competitive retail supply

A system of competitive retail supply above a certain consumption volume would place Thailand well as a regional energy hub and well as help maintain competitive local prices.

G. Simplification of approvals process for energy related projects.

This will realise greater value in such projects in the timeliest fashion.

The JFCCT and EABC can help move local initiatives forward and match them with foreign experience and strategies to the mutual benefit of the Royal Thai government, its foreign partners, and the people of Thailand. This can be achieved through seminars and conferences for sharing views and information, facilitating dialogue, and promoting and implementing best practice.

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