



**PRIME MINISTER'S ADDRESS:
"OPEN FOR BUSINESS: THE NEXT CHAPTER IN THAILAND'S
COMPETITIVENESS"
FRIDAY, 25TH NOVEMBER 2016**

Joint Foreign Chambers of Commerce in Thailand
www.jfcct.org



Board of Trade of Thailand



I am most honored to associate myself with the Joint Foreign Chamber of Commerce in Thailand (JFCCT). The JFCCT and The Board of Trade of Thailand (BOT) have worked closely together to strengthen Thailand's competitiveness and Ease of Doing Business. The collaboration dates back for many years and we deeply appreciate the valuable contribution we have made together in such other areas as trade and investment liberalization, anti-corruption and Thailand 4.0

Thailand is one of the ASEAN countries where AEC has been deeply integrated. Our tourism and services sectors remain competitive. We are negotiating for the conclusion of the Regional Comprehensive Economic Partnership (RCEP) with six other countries. RCEP is well disposed to become the largest FTA in the world. With more than three billion population, the proposed liberalization among ASEAN with Australia, China, India, Japan, New Zealand and South Korea will add more global value chains and economic growth as well as social well-being into Asia and the Pacific region.

In this critical time, the Thai and foreign business communities have enjoyed many cordial exchanges of dialogue, especially with the Government of His Excellency General Prayut Chan-o-cha.

Today's event enables yet another dialogue which shall prove to be a most positive contribution towards achieving our common goals, and we wish the JFCCT well in making this dialogue a great success.

*Mr. Isara Vongkusolkrit
Chairman, Board of Trade of Thailand*



Joint Foreign Chambers of Commerce in Thailand



Doing well in the various elements of Competitiveness is an on-going goal. The economy responds to those who nurture, enhance and develop it. The Thai economy belongs to the citizens of Thailand and the companies and individuals who invest in it, build it and strengthen it through positive contribution. We can all continue to play a part in enhancing our Competitiveness.

No major change is possible overnight. Looking ahead, lifting our Competitiveness requires us to focus on all of these various elements – enhancing ease of ‘doing business’ and removing roadblocks and obstacles, building capacity via hard and soft infrastructure and skills, looking at education with a fresh lens, reforming and restructuring certain sectors and generally supporting the ‘4.0’ vision.

On behalf of the Joint Foreign Chambers of Commerce in Thailand, I warmly welcome and thank His Excellency and members of cabinet for his and their presence. This year 2016 is 40 years since JFCCT’s founding, and we mark this also with the JFCCT Book, which shows some history of what we believe has been positive contribution by the foreign business community in Thailand.

To all attendees, a warm welcome and we trust that the event will be rewarding.

*Stanley Kang,
Chairman JFCCT*



Conference Programme

11:00 - 12:00	Registration
12:00	Lunch served
12:40 - 13:20	JFCCT Book: “40 Years in Thailand Supporting Foreign Business”
13:20 - 13:40	Remembrance of His Late Majesty the King
13:40- 14:20	Interlude (coffee, tea served)
14:25 - 14:30	Welcome Remarks by Mr. Stanley Kang, JFCCT Chairman
14:30 - 15:10	Prime Minister’s address
15:15 - 15:55	Q & A – Prime Minister and Ministers
15:55 - 16:00	Presentation of thanks to the Prime Minister and Ministers
16:00	Adjournment



Question and Answer session

QUESTIONS FOR THE PRIME MINISTER AND CABINET

PLEASE NOTE: These questions are based on the published policy recommendations of the JFCC. A short note on policy background is in the next section.

Question 1

Ease of dealing with government processes / ease of doing business.

To be an attractive location, ease of Doing Business is essential. Ease of Doing Business also makes for greater efficiency in the local economy. We see Thailand as a potential leader in attractiveness across the board, but there is work to be done.

World Bank 'Doing Business' ranking 2017 improved from 49th to 46th but that is still back to the 2015 level of 46th. There are many good programmes and intentions, but not much yet in terms of real change. There are still processes and procedures which are impediments and some areas appear to get worse.

We focus on three aspects – ease of operating a business, eGovernment and the Facilitation Act.

(a) Ease of operating a business. We are not yet a leader in this area – for example board meetings requiring in-person presence rather than video or audio presence, work permits are required to sign financial statements, various filings etc. Can we look to use of a 'Guillotine' approach to remove burdensome regulations? In South Korea and elsewhere this approach brought considerable happiness, improved 'DB' ranking and enhanced GDP.

(b) eGovernment: Putting procedures on line, recognising electronic and digital signatures in government-business, government-resident, B2B and B2C environments are all important. The move to eGovernment has some



impediments and in banking for example, 'wet' signatures are still required. Digital Economy policies per se do not really address the issues and the Licence Facilitation Act has no eGovernment targets. Could we ask Your Excellency to outline the overall eGovernment implementation plan?

(c) The **Facilitation Act** may have an impact on reducing corruption, but it has also produced heightened bureaucracy (many manuals to produce and follow) and removes positive initiative. It also does not include a programme of eGov penetration. Can the Act be reviewed to ensure it is achieving its real objectives?

Question 2

Skills and Innovation/ – free movement – major Work Permit and VISA changes.

Many businesses in Thailand (local and foreign) need access to foreign skills, often on short notice. Many have acknowledged that our work permit and visa laws and regulations are not fit for supporting efficient and effective movement of skills, for ROH (IHQ/ITC HQ) or to make Thailand a centre of various kinds of economic activity which SMEs and others can be part of, not to mention expectations about implementing Thailand's AEC intentions.

There are two areas:

- (i) For those working in Thailand whose function requires them to be locally employed
- (ii) Business visitors who do not intend to seek local residence or local payment or local employment and are participating in meetings, talking at conferences etc. In spite of interpretations of the law, in many cases a work permit is still needed. The relevant law goes back to 1972 (44 years).

Here we focus on the (ii) – it's about business visitors. The only real solution is an effective change to the law, to the definition of 'work' so that business visitors doing ordinary functions at board meetings here (eg



signing financial statements) or giving a paper at a conference (both activities having officially been classified as 'working' and needing a work permit) would not need a work permit.

Can we look forward to some major legislative change in this area rather than just re-interpretations and treatment of one-off exceptional cases? Can we overtly recognise 'business visitors' so that no work permit is needed for a variety of ordinary business visit – type activities which should not be treated as 'work'?

Question 3

Foreign investment and the services sector /structural reform – two parts

Service sector liberalization is a long standing recommendation of economists and policy makers. Two years ago Your Excellency the Prime Minister announced that changes which were being discussed in the press about possible further restrictions on foreign investment would not proceed at that time. That was welcome news to the investing community.

The AEC has commenced; looking at a wide picture of RCEP negotiations and possible TPP participation, to enhance competitiveness, to support Thailand's movement beyond the middle income trap, to stimulate SMEs, requires a recognition that various sectors in List 3 of the Foreign Business Act are ready to compete. While some financial services – related activities were removed from list 3, those sectors were already subject to their own sector-specific regulation.

1) Can we look forward to an exercise of a List 3 review to enable more sectors to be liberalised? In some sectors – eg telecoms -- but there are others – there is a need for structural reform to unlock value and make the sector contribute better. State-owned enterprise reform is difficult even in more normal circumstances; plans for reform stalled over a decade ago. But in spite of some relatively minor restructuring, the SOEs seem to be expected to take centre stage in the Digital Economy (which is



underpinned by telecoms infrastructure and an effective and efficient sub sector), in spite of high level policy to the contrary.

2) Can we look forward to some tough decisions being made in the Telecoms sector to evolve and reform the SOEs in the telecoms sector in the near future which would be essential to a properly structured and competitive telecoms sector thus making Digital Economy work?

Question 4

Education – two parts

Due to findings by a JFCCCT survey among its 9000 members and based on recommendations on Education we could learn from the National Reform Council, we concluded that Education and Skills of young Thais can only be improved by supporting and training the teachers for both pre- and in-service. *Teachers are the fast and most direct leverage in any education system.* The ability to improve the quality of teaching throughout the country is a prerequisite to long-term skill development of the Thai workforce. The imparting of soft skills, work ethics and other areas including English language education was also very important.

Q: What is the government's policy on teacher training at the central and local levels in order to move the Thai education system to be 'hands on'?

Q: What educational reforms are in the pipeline which address the learning and development of soft skills, work ethics and language skills (especially English proficiency)?

Question 5

The Internet is an essential business tool and the basis for an intelligent society.

We strongly recommend a TRUSTED INTERNET using a multi-stakeholder model. Security is essential but we don't see it as the opposite of freedom; security is everyone's job and, with the right governance, is the underpinning of trust.



Proposed changes to the Computer Crimes Act and related laws would seem to take us away from the essentials of trust.

Can we look forward to a close consultation on these laws again please?

Question 6

Anti corruption

It is very encouraging to see anti-corruption initiatives, from both government and the private sector. JFCCT for example has signed an MoU with National Anti Corruption Commission and has participated in various initiatives. JFCCT has recommended Whistleblower protection, and an end to the use of Criminal Defamation, amongst other things. The Stock Exchange of Thailand has instituted some initiatives also. Public sector and private sector collaborative efforts, education, peer pressure through Codes of Conduct, promote understanding of Rule of Law, increasing the chance of being caught, understanding the stigma of public exposure and the consequences of being banned from government business, education about local and foreign extraterritorial legislation, recent changes in local legislation, are some of the measures. Increasing penalties alone has a limited impact. It seems that more could be done about government projects – moving away from a rent-seeking, concession mentality.

Q: What are the measures which your government believes will be most effective, which are likely to be seen during the coming period?

BACKUP QUESTION

Tourism

Thailand is regarded as a tourism destination; many would like to see it repositioned in that way. But Thailand also has the potential to be a centre of excellence in tourism and hospitality by building on strengths in these areas.

Possibilities include being a centre for hotel management and cooking education and training etc. not just a destination. The growth of tourists from countries that do not commonly use English has been impressive, but we have serious problems providing tour guide and other services to



these groups. Tourism Safety & Security is an on-going challenge. What are the government's plans to stimulate and incentivise this sector?

SOME POLICY BACKGROUND NOTES

Background policy relevant to the specific question referred to

Policy Background to Question 1 – Ease of Doing Business

World Bank 'Doing Business' ranking for Thailand 2015 was 46th, 49th in 2016 and some improvement for 2017 back to 46th. There are daily impediments in the overwhelming amount of paperwork needed to be repeatedly filed, for various permits and licenses.

In some areas, for example, the new forms for 90-day reporting and reporting at re-entry for work permit holders and others are extremely intrusive, and are felt to be negative moves based on feedback from business people – i.e. they are not positive towards greater ease of doing business.

The License Facilitation Act has good intentions and appears to have achieved some positive outcomes; however, it also has a negative outcome in some agencies. The lack of any eGovernment target will set us back in that respect; once paper-based processes are further cemented, it will be harder to do the necessary process re-engineering to migrate to on-line processes (which are in almost all cases not just an 'e' version of a paper process).

To be effective in a reasonable time frame, using a 'Guillotine' approach is needed. Leaving the decisions to the line ministries alone will not produce the results needed.

Thailand has the potential to be a leader in business attractiveness, but we suggest it will take some major and deep changes.

SME's play a vital role in the economy. The ASEAN Strategic Action Plan for SME Development 2016 – 2025 is relevant. The strategic goals identified there would seem to be very relevant also to SME's in Thailand.



Many are below the BOI radar and access to finance and other aspects of doing business are a challenge.

The Business Collateral Act enhances what can be used as collateral for loans. This is a positive development. More is being done for other sources of finance and collateral so that private-sector sources have a conducive environment to make finance available, but a fundamental issue for SME's is regulatory overhead. The same ease of doing business impacts, which apply generally, also apply to SME's, but more acutely as they have less resources to serve sometimes crippling overhead.

Policy Background to Question 2 – work permit / visa changes

An extraordinarily broad definition of 'work' was introduced in 1972; 44 years ago during a crack-down on foreign engagement. Times have changed, but unfortunately the law has not kept up.

This restriction is now in the Foreign Employment Act of 2008 which says that physical exertion or exertion of mental effort is 'work', whether paid or not.

While *interpretations* of this have been done (e.g. March 2015 – see below), the law still remains requiring work permits in a wide range of situations. Most business visitors believe that by ticking a box such as 'business' in the entry form TM.6, there is no need to obtain any other permit in order to do the usual things, which in most countries a business visitor can do without the need for further permits.

To illustrate the need for change, there are two categories.

- i) People who need to be in Thailand to work; are local employees and need to work in Thailand. They are in the generally accepted definition of the word "work".
- ii) *Business visitors* who have no intention or need to take up local employment and are not resident in Thailand. They come to Thailand



to do various business related activities which could include attending meetings, seminars or having business discussions. They do not seek local employment.

In the generally understood definition they are not ‘working’; however, under the very broad definition of ‘work’ in Thai law in many cases, they would need a work permit.

Here we focus on category (ii) – *business visitors*. In March 2015, an *interpretation* was done with the aim of supporting IHQ and related policies. The following activities were interpreted as not ‘working’:

1. Attendance at meetings, gatherings of information or seminars
2. Attendance at exhibitions or trade exhibitions
3. Visit at business operations or attendance at business meetings
4. Participation to listen to special lectures and academic lectures
5. Participation to listen to lectures in any technical trainings and seminars
6. Purchasing of goods at trade exhibitions
7. Attendance at the alien’s company board meeting

But this raised more questions than it directly answered, for example:

Expanded interpretation March 2015	But what about?
i. Attendance at meetings, gatherings of information or seminars.	Giving a paper or presentation, chairing a session?
ii. Attendance at exhibitions or trade exhibitions	Exhibiting, selling an item?
iii. Visit at business operations or attendance at business meetings	Presenting a paper or report, chairing, signing financial statements?
iv. Participation to listen to special lectures and academic lectures	Chairing a session, giving part of a lecture; being on panel? Speaking at length from the floor?
v. Participation to listen to lectures in	Chairing a session, giving part of a



a technical trainings and seminars	lecture?
vi. Purchasing of goods at trade exhibitions	Selling goods - samples?
vii. Attendance at the alien company's board meeting	Chairing, presenting a paper or report, signing financial statements? Does having IHQ/ROH/ITC status make a difference? If so, how?

Two recent situations help to better illustrate the problem (both reported in the English language press in Thailand):

a) The Dept. of Employment has reconfirmed that a foreign director of a Thai company may not sign accounts (financial statements) at a board meeting unless he has a work permit, and that defect vitiates (undoes the validity of) the accounts. The workarounds proposed are very cumbersome and add to 'doing business' overhead. This flies against the very purpose of IHQ policies which are to encourage regional and international headquarters to be established in Thailand, which means that people not usually working here in Thailand need to come and carry out various business activities. Item (i) and (vii) above; however, suggest that all normal activity at a board meeting should not require a work permit.

The principle would not only apply to signing accounts, but also to giving a management paper at the meeting, as an example, and most probably, to chairing the meeting.

b) The holder of a business visa was advised that he could not speak at a conference as this was 'working'; again, this is contrary to the general understanding of item 1 above.

Every day there are numerous business visitors to Thailand who do not realize that a work permit is needed in order to speak at conferences or do various normal things at other meetings.



Thus, it continues to be necessary to change the law. One possible effective way to do this is to focus on the definition of a 'business person' or business visitor, a concept borrowed from APEC, which Thailand had already agreed to in that context. This same concept can be applied so as to change the law to provide that business visitors do not need a work permit. A VoA or visa-free category could be used – sample language follows:

Recognize business activity which will override any residual restrictions from the definition of 'work'

"A 'Business Person' is someone seeking temporary entry into the Kingdom for business activity that is international or trans-border in some material way, and is not seeking employment or residence in the Kingdom. Their primary source of remuneration, principal place of business, and predominant place of accrual of profits remain outside the Kingdom.

They may seek entry for the purpose of:

- a) Conducting, arranging, organizing or attending conferences, seminars, lectures or workshops and participating in any capacity including, but not limited to presenting papers, chairing sessions etc.
- b) negotiating, proposing or setting up the sale of services or goods where such negotiations do not themselves involve direct sales to the general public (although that may be part of the later intended business enterprise), but may involve sales of samples
- c) Activities to set up businesses of any kind and related activities such as raising funds for investment or arranging representation, marketing or distribution agreements
- d) Attending board or management meetings and participating in any capacity.
- e) Doing any other act, matter or thing incidental or related to any of these things.

A Business Person validly carrying out any such activity shall not require any work permit. In the event of any inconsistency between this law and the Foreign Employment Act [or other law purporting to define work] this law shall prevail."



To keep up with competing economies, such entry should be made easy. This change is a key part of overall recommended changes proposed by the JFCCT. Further details are available.

Policy Background to Question 3 – foreign investment, services sector liberalization; structural reforms

We see services sector liberalization as being about more than raising foreign equity levels (although that is the starting point), it includes:

- Liberalizing foreign equity limits
- Free movement of skills (talent)
- Sector specific changes and mandates/availability of licenses and permits to support a more level playing field for new entrants
- Other sector-specific reforms and restructuring

The Foreign Business Act has a mechanism in List 3 to release items. It has not really been used. The release of some finance-related sectors from the catch-all item 21, while a good move, had little overall liberalizing effect as there is sector-specific regulation in those areas already.

In addition to raising foreign equity limits, structural reforms also play a role in liberalization.

Another relevant example are the SOE's in the telecoms sector, which continue to play a limiting and distorting role. Meanwhile unlike their counterparts in more competitive economies in the sector, they have not taken their expertise to foreign markets and built value for Thailand.

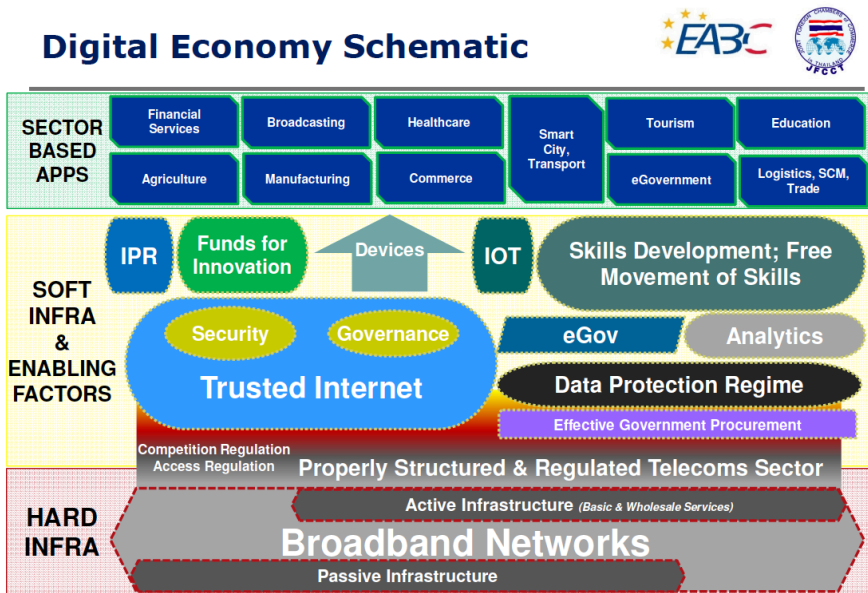
Thailand is probably unique in the world for an upper middle income economy not to have worked through this evolution and reform. The two SOE's continue to try to block major developments and ad-hoc deals, and in the end are done through commercial necessity, which distorts the market. They should evolve and reform; for example, all employees could be guaranteed employment in some re-trained capacity in some enterprise or another. They are still 100% state-owned and end up being tools for policy.



Rather the industry as a whole should be made to work efficiently and effectively and that should be where policy is focused. A much more competitive and investment-attractive sector will have a multiplier effect on the rest of the economy and will play a proper exponential role in supporting the digital economy.

This situation is relevant regardless of other developments in the Digital Economy.

We see the digital economy working in three layers:



Digital Economy Jan 2015



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

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

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

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

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

Thus a well-structured, well-regulated telecoms sector underpins it. The SOE's (or a merged SOE) should be infrastructure and base service providers, and not be competing in retail mobile, further, they should not be the operator of fundamental infrastructure such as limited gateways or a national broadband network. There needs to be wholesale industry and one single regulator (NBTC) licensing all spectrum and the right to offer services with fair terms for all, so that free and fair completion (not just in price but also in service and innovation) can be offered.



Policy Background - Question 5 - THE INTERNET

The Internet is an essential business tool and the basis for an intelligent society. A TRUSTED INTERNET policy says that all valid user groups (business, government, individuals, organizations) can have confidence that data is secure and it not monitored, illegally accessed or sold. While there is no perfect solution, this has elements of security, freedom of expression (within some accepted norms) and trust. This relies on a multi-stakeholder model (MSM) not a purely top-down model. MSM has been accepted by the majority of governments in the world today. Security is essential but we do not see it as the opposite of freedom; security is everyone's job and, with the right governance, is the underpinning of trust.

Proposed changes to the Computer Crimes Act, parts of the new Cybersecurity law would seem to take us away from the essentials of trust. The Personal Data Protection law is lacking a Rule-of-Law based cross border regime, where currently it is up to a committee to determine the rules. Legally predictable support for use of cross border data flows is an essential part of being an economic centre.

Policy Background - Question 6 – ANTI-CORRUPTION

Anti-corruption initiatives, from both the government and the private sector, are encouraging. The JFCC has signed an MoU with the National Anti-Corruption Commission and participated in various initiatives. The JFCC has recommended Whistleblower protection, and an end to the use of Criminal Defamation, amongst other things. The Stock Exchange of Thailand has instituted some initiatives as well.

Various measures include:

- i) Public sector and private sector collaborative efforts,
- ii) education,
- iii) peer pressure through Codes of Conduct,



- iv) promoting understanding of Rule of Law,
- v) increasing the chance of being caught,
- vi) understanding the stigma of public exposure and the consequences of being banned from government business,
- vii) education about local and foreign extra-territorial legislation,
- viii) recent changes in local legislation,

These are some of the positive measures. Increasing penalties alone will have a limited impact.

A rent-seeking mentality (concession style) in government licensing, projects and permits, can have a corruptive effect. More can be done to position, present and tender for government projects and value-enhancing investments, moving away from a rent-seeking, concession mentality. The way license allocation (e.g. spectrum auctions etc.) and tendering is done, is not so much the issue as what often occurs before and/or after the process.

The JFCCT website www.jfcct.org holds several policy recommendations, including the JFCCT Policy Paper 2014 and many submissions and white papers. The JFCCT BOOK also includes various policy issues reflected in The Early Years parts, JFCCT Today and the committee pages.



About the JFCCT

The Joint Foreign Chambers of Commerce in Thailand is the umbrella body for various Thai-foreign chambers or business associations operating in Thailand. There are 32 chambers and business associations representing more than 9,000 companies in this wide membership.

Our mission is to promote trade and foreign investment, encourage skills development and transfer with the overall aim of contributing to the economy in which we live and work and to which we have made our commitments. We work with the Royal Thai government and various business organisations and agencies such as the Board of Trade, Board of Investment and the Federation of Thai Industries and by way of advice and recommendation to foreign governments – for the benefit of the Thai economy. If the Thai economy benefits and grows, so too will all those who are part of it.

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