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JFCCT Consultative Meeting with Board of Investment of Thailand Thurs 7 February 2019, 1300 - 1600 hrs

Background Note for JFCCT members

Relevant Background Topics appear in the order (and number) in which they appear in this Agenda

Agenda

- 1) Thanks and recognition for BOI Secretary-General
- 2) Update from BOI Secretary-General
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To save space and avoid repetition, JFCCT submissions and supplementary materials are linked via URL and/or QR codes.

BACKGROUND NOTE

3. Foreign Investment - Service Sector Liberalisation

Commercial presence (via a Thailand-based entity), or Mode 3 is one of approximately four modes of participation in Thailand. Commercial presence is possible via:



- A local entity which is at least 51% Thai owned and in some cases, depending on the industry, may have other restrictions.
- A local entity which is up to 100% foreign owned, with a foreign business licence (FBL) under the Foreign Business Act (FBA);
- A BOI promoted entity, or entity promoted under IEAT rules or rules under other legislation, or under a treaty, where a Foreign Business Certificate (FBC) is granted allowing up to 100% foreign ownership.

Ability to hold greater than 49% foreign ownership depends on the sector.

The FBA has three lists describing business activities (sometimes – too broadly – referred to as ‘sectors’); an FBL or FBC is available for activities under List 3; Ministerial approval is needed for activities under List 2 and List 1 is not open to foreigners.

If the sector is not referred to in the FBA lists (or is not otherwise regulated by sector specific legislation), no special administrative process is needed for greater than 49% foreign ownership.

The concept under global rules such as those in GATS is that National Treatment is generally expected. That is, the entity should enjoy the same treatment as if it were a local company.

Much has been published on the importance of service sector liberalization. But there is no material positive movement; in fact in some respects there is a tightening.

Manufacturing was liberalised in the 1980s. Thailand did well; ESB (Eastern Seaboard) is the result. Economists and many business leaders agree that liberalising services is the key to emerging from the middle income trap. But there is resistance. JFCCT has recommended liberalizing services for a long time, as has ABD, World Bank, TDRI, various economists at Thai banks.

Progress with liberalisation

List 3 is required to be reviewed annually (ie removing items from List 3 so that they are open to majority foreign ownership) and has been revised three times (2013, 2016, 2017) with some 18-20 industries released (depending on how they are defined)-mainly in financial services¹, falling under item 21 (the catch-all) in List 3. The releases are generally considered liberalisation-neutral as there is sector-specific legislation covering the same fields. The exceptions are arguably for Representative Offices and Regional Offices, which are considered real liberalisations.

¹ JFCCT has a separate analysis of these three Decrees



An example of sector-specific regulation covering most removed business activities is the Financial Institutions Business Act (FIBA). Originally, FIBA required that Thai nationals hold not less than three-fourths of the total issued voting shares in a commercial bank and that at least three-fourths of the total number of directors be Thai nationals. These rules were relaxed some ten years ago Bank of Thailand was empowered on a case-by-case basis, on request, to permit non-Thai nationals to hold up to 49 percent of a company's voting shares and to allow foreigners to comprise more than 25 percent, but less than 50 percent, of the directorship of a relevant company.

Press statements in 2018 have indicated other releases:

- i) Some 19 activities in support of the Eastern Economic Corridor (EEC) were reported to have been moved from List 3 of the FBA, reported to have been done on Friday 16 June 2017 but would only be applicable to the EEC. The Minister reportedly said at the time: "The move allows foreign companies to join joint bids on infrastructure projects, but also for other government projects such as rail, the skytrain, airports, power plants and petroleum exploration businesses".
- ii) March 2018: The ten 'S' curve industries,²
- iii) June 2018: five activities, most intra-group or in-house³
- iv) September 2018⁴: three activities (intra-group services), out of some 30 being considered.

But to date, it appears that only the three published revisions to List 3 have been made; as at late September 2018 is unclear which (if any) of these four statements would be the basis of removal of items from List 3.

Thus it might be said that in its entire life since 1999, allowance for Representative Offices and Regional Offices are the only net-liberalisation positive changes in the FBA.

This does not seem to be consistent with the purpose of the FBA List 3 mechanism. The underpinnings of the FBA date back to the early 1970s, almost two generations ago. Since then, significant educational and economic modernization has occurred and it would appear that Thai companies in many industries are competing well in both domestic and international markets, and are doing so utilizing world class technology and products. Yet they are still formally protected from competition on the basis that they are not ready to compete.

Being well-positioned for regional and global trade and investment requires retooling by opening up for modernization and competition, welcoming those companies which can help

² Bangkok Post March 26, 2018

³ Bangkok Post June 18, 2018; Tilleke & Gibbins note www.tilleke.com/resources/liberalization-planned-five-businesses-under-list-3-foreign-business-act

⁴ Bangkok Post, September 24, 2018, p B3



train Thai firms to deliver world class services and products and also get Thai companies up to speed in areas where in the past they may not have been competitive. Thus, competition should not be shunned, rather many sectors, companies and consumers would do well from competition.

While some Thai brands have established themselves in regional and global markets, an example of policy and action failure is in telecoms. There are two firms which are still 100% state-owned and continue to be used as policy tools, continue to cause market distortions and continue to under-perform. They need to evolve away from 100% state ownership, and undergo major reforms required for Thailand to fully benefit from the 5G technology which has the potential to have major positive impact on the overall Thai industrial sector. Their merger alone will not achieve this. Unlike the vast majority of the world's firms in a similar position in that industry, which have become competitive, value-adding players, adding greatly to national capacity and wealth, the two firms continue to rely on the private sector to rent their allocated natural resources.

As 5G will require investments in frequencies, networks, human capital and products in an unprecedented level and require major industry reforms so that resources are utilized to full potential the current foreign equity limitations and associated dominance restrictions will negatively impact Thailand as an investment and growth market.

ASEAN context

AFAS (ASEAN Framework Agreement on Services) is a framework agreement relying on specific commitments. An ASEAN Trade in Services Agreement (ATISA) is planned, the goods agreement (ATIGA) having been in force for some years.

Thailand's 9th and recent 10th AFAS packages have been weak in offering liberalization. In the 10th package, it seems that only six sub-sectors were committed, including:

- Telecoms services under type 1 licence for packet switched data, circuit switched data and EDI. (Comment: but Type 1 licences support a 100% , not just 70% foreign ownership, by application, and FBLs have been granted).
- Transport services: goods delivered by vehicle operated by man or animal power.
- Maintenance of LNG ships, with weight not exceeding 500 tonnes
- Clearing of barges.

What is services liberalization?

Services liberalisation is not just lifting foreign equity limits (FELs) but has a number of elements; all of which we recommend be pursued:

- Relaxation of FELs
- 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 FTAs 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).

Data flows/data trade are part of services. (Thus the cross border rules in the draft Personal Data Protection law) are important.

‘Doing Business’ overhead

JFCCT has participated in and supported the development of the Guillotine project (‘Simple & Smart Licence’ - see more in the Annex to this document), and greatly looks forward to the resolution of many issues. Included in the submissions are recommendations about the FBA, on the basis that the business overhead of continuing to require licences in areas where Thai companies are ready to compete (and in fact do, but still under some protected terms), is an unnecessary and non value-adding overhead.

Thailand’s ‘doing business’ ranking (World Bank) for 2019 has slipped from 26th (2018) to 27th.

Definition of ‘foreignness’

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

Standards other than the FBA standard include:

- i. Broadcasting – control and nationality factors
- ii. Foreign Dominance Notification (telecoms Licence categories 2 and 3)) – a shopping list of connecting factors including control, indirect shareholding, banking relationships, supply relationships, personnel, staff etc, . This causes enormous barriers to investments, technology and know-how transfers into Thai entities.
- iii. Insurance with some caps at 25% but in practice different.
- iv. Aviation services from January 2018, relying on a 46 year old Decree – restricts nationality, control, shareholding for an Air Operating Licences (AOL), on safety grounds.

JFCCT and others have cautioned against changes to the ‘foreignness’ definition in the FBA, which as noted in the deliberations in the Council on Trade in Services in Geneva in relation to the Foreign Dominance Notification, is regarded as the basis of the GATS commitment.



JFCCT has made a detailed analysis of the Lists and submitted a proposal⁵ about the FBA dated 20 June 2018 to His Excellency the Minister of Commerce.



JFCCT Recommends in relation to List 3 of the FBA (20 June submission has more details):

- (i) Removal of many activities which are strategic (for example logistics) which would contribute to Thailand's success as a geographical centre;
- (ii) Removal of other specific areas including Accounting Service Business, Architecture Service Business, Engineering Service Business, Advertising Business, Hotel Business;
- (iii) Removal of item 21 "Other categories of service business" ; if a limited number of service activities can be defended as needing to be retained, there should only be a short, negative list.

4. Work Permit & Visa, Human Capital Development, Smart Visa

Work Permit and Visa issues continue to be the single most talked about administrative impediment to doing business. The Smart Visa is a very good concept but it is limited in appeal.

JFCCT has engaged on this area for a long time and has published comprehensive analysis and recommendations. JFCCT has also worked with the Guillotine Unit on these topics, particularly in September 2018.

Work Permit and Visa issues – Doing Business enhancement v 7.1 – June 2018⁶



Work Permit and Visa Recommendations Summary based on v 7.1 – June 2018⁷



Also published are sanitised case studies (see 'Major Business Issues / Work Permit & Visa bottom right of home page www.jfcct.org and follow the internal links.

⁵ www.jfcct.org/major-business-issues/foreign-business-act/

⁶ <https://d2oc0ihd6a5bt.cloudfront.net/wp-content/uploads/sites/1871/2018/07/WORK-PERMIT-VISA-updated-June-2018-v-7.1.pdf>

⁷ <https://d2oc0ihd6a5bt.cloudfront.net/wp-content/uploads/sites/1871/2018/07/WORK-PERMIT-VISA-RECOMMENDATION-SUMMARY-USING-v-7.1.pdf>



In summary, JFCCTs high level recommendations are for two groups:

1. **For business visitors**, who come to Thailand to explore, give talks, hold conferences, hold meetings (including regular meetings), exhibit at trade fairs and discussions but who do not intend to live in Thailand or use Thailand as the base of employment:

JFCCT Recommends changing the definition of 'work' to remove unnecessary and unhelpful encumbrances and bring it into line with APEC Business Mobility principles where 'work' is only for locally-engaged and paid activity and not genuine volunteer activity or short visits. Although efforts were made with a March 2018 Decree, with interpretations since, there is still a lack of clarity and too much restriction. JFCCT has proposed actual wording, with English and Thai text.

We cover this under CERTAIN SPECIFIC ISSUES, below

2. **For those living and working in Thailand:**

JFCCT Recommends splitting the administration to two broad groups: skilled and unskilled. There are some 20 individual changes, some of which should be achievable almost immediately, and some needing revisions. The changes include these:

- (i) In an ever-increasing way, using the SMART VISA as the platform for all skilled work by expanding scope (see more on SMART VISA below), and otherwise to have one instrument – a 'work visa'. For SMART VISA, also removing unnecessary steps and streamline inter-agency referrals.
- (ii) removing the TM.30 process
- (iii) 90 day reporting should only be for change of address and should be fully on-line
- (iv) harmonizing requirements, processes and procedures as between Work Permit and Visas and making the 'One Stop' experience a true, single visit, harmonized experience.
- (v) Expanding the use of one-stop facilities for use by all groups, not just BOI promoted companies and higher revenue companies
- (vi) Cease using capital invested and staff ratios as bases for hiring foreigners.
- (vii) Devising a new simple business visa available on line or VOA, simply by stating purpose of entry (or allowing visa-free entry from many countries).
- (viii) Eliminate the need for an 'urgent and necessary' category and thus the use of WP.10.
- (ix) Eliminate use of form TM.6 for tourist, business visitors and other groups
- (x) Permanent Residents should not need a Work Permit
- (xi) Two year work permits for chamber staff (and then as part of one 'workvisa' instrument)



- (xii) Geographical restrictions on work permits should be removed

As we understand that these issues or most of them are under review in the Guillotine Unit, for present purposes we focus on some specific items TM.30 and 90 day reporting – see below under CERTAIN SPECIFIC ISSUES.

3. Specifically for **Unskilled workers, JFCCT Recommends:**

- (i) Expanding use of the “pink card” to facilitate employers’ ability to increase workforce for short-term periods without entering quota or agency systems.
- (ii) Reducing the visa fee, re-entry permit fee, and pink card issuing fee.
- (iii) Reviewing restrictions on the number of unskilled workers using a quota system.
- (iv) Apply all relevant aspects from paragraph 2 (those living and working in Thailand).

4. **For all, JFCCT Recommends:**

- i) Develop an on-line (digital) system for all processes, applications, permits, licences on line for use by citizens, business, investors, trading partners; cut out unnecessary procedures, paperwork and licences. Even before a full on-line system is available, harmonization and de-duplications can be done. JFCCT has proposed this in detail to the Guillotine Unit and at the Consultative session on 27 September 2018 attended by His Excellency Dr Kobask Pootrakool and senior BOI officers. Eliminating unnecessary paperwork includes removing re-submission requirements where there is no change.
- ii) Use of the eGate for all possible groups where information is held on line; not just citizens and permanent residents, but also existing permit holders, business visitors, frequent tourists and others. This is about efficiency, reducing queues and reducing cost.
- iii) For Tourists, on line and VOA should be available at low or no cost for almost all countries.

For present purposes we focus on some specific items about harmonization and removing duplication – see below under CERTAIN SPECIFIC ISSUES.

5. Specifically, for **skilled workers** – the **39 professions** not open to foreigners under a 1979 Decree have been reviewed. JFCCT has identified some eight professions of interest:

Agriculture
Brokerage
Auction
Accounting, Auditing
Architectural services.



Civil Engineering
Tour Guide (clear agreement that ‘Tour Leader’ is acceptable)
Legal services (only for Arbitration)

The situation is complex as each profession has its own regime and issues, and sector-specific legislation apart from the 1979 Decree. JFCCT has identified some eight professions to open and in mid 2018 has made an analysis and recommendations about removing restrictions.⁸



How these professions can be opened needs more focused analysis. There will also be some resistance from local professions, anywhere in the world. One challenge is to help meet the Thailand 4.0 vision which gives this a special importance.

JFCCT Recommends removing restrictions on foreigners engaging in these professions.

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

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

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

⁸ <https://d2oc0ihd6a5bt.cloudfront.net/wp-content/uploads/sites/1871/2018/08/Occupations-and-Professions-Prohibited-for-Foreign-Workers-v-1.7A.pdf>



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

CERTAIN SPECIFIC ISSUES

From this list of issues, JFCCT focuses on some specific issues (below) and is keen to learn of progress, broadly with others.

Item 1 General developments on major issues – definition of ‘work’

Item 2 (ii) TM.30:

The TM.30 form has become an unreasonable and intrusive burden which (completely unnecessarily) sends the wrong messages about living and working in, retiring in and visiting Thailand.

TM.30 requirements have been in place for many years but were previously only enforced for properties defined as hotels. The enforcement has changed over the past two years and many foreigners now experience that they have to provide the TM.30 registration before they are allowed to do the 90 day registration. Conversely, there are cases where forms are prepared and submitted but the local Immigration office rejects them for processing.

The TM.30 regulation is particularly excessive for foreigners who stay in Thailand for the long term, as they also

- report their address, phone number and email address on the immigration form TM.6
- report their address on the 90 day reporting forms
- and for those with work permits, the authorities can in additionally get hold of them in their work location, if that is the purpose.

Many foreigners have work permits that allow them to work in several locations and they or their landlords (if they are renting) would hence have to go to immigration to register TM.30 forms several times per week, in order to remain in compliance. It could actually be difficult for such foreigners to get a lease contract, as the burden on the landlord would be too heavy.

There are also many foreigners with weekend homes in a district separate from where they are working, and they would face the same problem.

As a practical matter, this means that every time a foreign person working legally in Thailand moves from, for example, Bangkok to Chonburi, they or their landlord need to complete the TM.30 form and go to Immigration and submit it. The online registration is currently available only in the Thai language and most landlords experience that the system is unstable and access is often denied. They must therefore go to immigration to physically submit the TM.30 form.



In addition are retirees who are validly in Thailand.

Property owners (local and foreign) may rent the property or if occupying it, may have guests, (including family members) who are tourists and may have a stay as short as one day. The tenants of owners may have also have such guests.

The TM.30 would thus mean that the property owner has to be informed of all guests (their own and their tenants). Thus the TM.30 also brings additional overhead to the Tourism sector.

Our understanding is that Thailand seeks to move away from burdensome requirements particularly when a Thailand 4.0 vision is aspired to. This regulation is surely contrary to the Thailand 4.0 vision because it means that a variety of groups of people need to spend time with on-going administrative matters which have little or no real value. Thailand 4.0 is about a shift in what any person's work day or time occupied should include. If these onerous requirements are allowed to fester, or to grow, the economic and reputational impact is obvious.

JFCCT has recommended elimination of TM.30. We understand however that some law enforcement authorities consider TM.30 to be a useful tool in identifying illegal activities. Other existing means may be equally useful however.

JFCCT requests a better understanding of how TM.30 has demonstrated value in this way and that there are no other other instruments or processes which could or do cover the situation. If then some application of TM.30 be useful, JFCCT recommends a special instrument for such applications (not a TM.30). It should be clear that all other categories (skilled workers, retirees etc etc) be exempt from any such instrument.

JFCCT has recommended elimination of TM.30; JFCCT again recommends it.

Item 2 (iii) – 90 day reporting

This is not part of Smart Visa; progress with removal elsewhere is proposed, except for change of address.

Item 4 (i) – Harmonisation and De-duplication

A separate file is available to show the details.

Human Capital Development

We see a variety of measures being needed, particularly considering the need to meet a Thailand 4.0 economy and society. Broadly these include educational reforms, collaborations amongst leading academic institutions, industry-academic collaboration, better infusion of foreign skills (and thus Work Permit & Visa reform) and local training and skills transfer. JFCCT has published details of such recommendations elsewhere.



SMART VISA

SMART VISA is considered an attractive instrument. JFCCT responded to the request to provide detailed recommendations about changes to enhance the programme. Changes are understood to be:

- Changes to salary floors in at least two categories
- Expansion of the SMART VISA to include, in addition to 'S' curve industries, Alternative Dispute Resolution (including Arbitration), Human Resource Development, Environment, Alternative Energy Management.
- Other adjustments to enhance efficiency.

JFCCT is keen to see the published details and recommends further use of SMART VISA.

5. SME Support and promotion

JFCCT has published recommendations about development of the ASEAN SAP SMED (Strategic Action Plan for SME Development) and is keen to see regional progress. JFCCT has also published many specific recommendations about SME development and notes the activities of OSMEP and the programmes of the Ministry of Industry for SME digitization. For present purposes we focus on some specific topics.

BOI announcement 2/2561 dated 31 January 2018 was made for Thai SMEs to improve and to strengthen SMEs for sustainability growth. The application qualifications are

- Thai shareholder at least 51% registered capital;
- Net fixed asset value or investment (land and working capital are not included) not more than 200 million baht

The conditions are:

- Investing at least 500,000 baht (land and working capital are not included);
- DE ratio max 3 to 1;
- Allow used machine, which is available in Thailand, valued not more than 10 million baht (according to salvage value) to obtain promotion. Or use new machine which has value more than 50% of the total machine value of the project;
- Apply during 1 January 2018 – 30 December 2019;
- Promoted activities A and B1 categories.

The privileges are:

- Corporate Income Tax exemption at 200% of investment (land and working capital are not included) for category A activity;



- Import duty on machinery exemption;
- Other benefit according to BOI announcement 2/2557 dated 3 December 2015.

BOI announcement 2/2561 also mentioned additional privileges for 20 provinces.

From JFCCT perspective, SMEs in Thailand comprise of majority Thai owned, minority Thai owned, and foreign owned SMEs. All are entities incorporated in Thailand are in the same economic basket seeking the same support and facing the same challenge. In order to improve SMEs' sustainability in Thai economy, **JFCCT recommends** that should look at SMEs as one whole economic driver and disburse the measurement regardless of nationality criteria. It would also support promoting foreign SMEs from aboard to invest in Thailand.

On EEC development JFCCT recommends more regard for supply chains and the ecosystem. The 10 S-Curve industries are necessary part of supply chains and ecosystems. In order to realize the production output from those 10 S-Curve industries requires support industries along the supply chain which are mostly SMEs. **JFCCT recommends** if the measures and benefits allow SMEs including foreign majority owned SMEs, EEC activities would be better enhanced and both Thai and foreign SMEs participation in the EEC area would be beneficial.

6. Thailand's Proposal for an ASEAN industrial 4.0 plan

Thailand's published regional 4.0 development plan, in support of ASEAN integration is under the theme 'Advancing Partnership for Sustainability'. It has 12 elements:

1. ASEAN Digital Integration framework action plan (DIFAP)
2. ASEAN Innovation roadmap ('Partnering for Innovative Community')
3. Guidelines on skilled labour and professional services
4. ASEAN Declaration on industrial transformation to industry 4.0
5. Digitisation of ASEAN micro enterprises
6. ASEAN Single Window ASW
7. Local currency settlement framework,
8. ASEAN infra financing mechanisms
9. Comprehensive official gastronomy guidelines for ASEAN region
10. 2019 conclusion of RCEP
11. Promoting sustainable fisheries through ASEAN co-operation
12. Roadmap for ASEAN sustainability in the capital market

Several of these are aspirational for Thailand itself – for example the DIFAP. JFCCT is keen to learn what incentives are proposed by BOI to develop to a high regional standard.

In addition, some would require significant reforms in Thailand if they are to be a regional standard-setter– eg about skilled labour and professional services (see item 4 in the Agenda for this Consultative session.).



Connected with this is a proposal about raising standards about NTM use, and transparency with publishing eligible NTMs (Non Tariff Measures).

7. Renewable Energy

The most recent published Power Development Plan (PDF) was 2015 which plans ahead to 2036.

The Power Development Plan 2018 is due for release imminently.

The PDP2015 was devised as a government master plan alongside the Energy Efficiency Development Plan, the Alternative Energy Development Plan (AEDP), the Natural Gas Supply Plan, and the Petroleum Management Plan. The overarching objectives of the Ministry of Energy's plans were set as: (1) energy security; (2) economy, and specifically maintaining appropriate costs of power generation and implementing energy efficiency; and (3) ecology, with a particular focus on reducing environmental and social impacts by lessening carbon dioxide intensity of power generation.

Thailand Primary Energy Supply in 2017^P

Unit: Thousand Tons of Oil Equivalent (ktoe)

Fuel Type	Production	Import	Total	%
Bio Fuel	1,956	-	1,956	1.42
Lignite	4,118	78	4,196	3.04
Coal	-	13,808	13,808	10.00
Crude Oil	7,099	45,985	53,084	38.45
Condensate	4,464	731	5,195	3.76
Oil	-	2,725	2,725	1.97
Natural Gas	32,121	13,523	45,644	33.06
Renewables	15,786	-	15,786	11.43
Traditional Renewables	8,559	68	8,627	6.25
Electricity	-	2,058	2,058	1.49
Other	295	-	295	0.21
<i>Export</i>			<i>(11,960)</i>	<i>(8.66)</i>
<i>Stock Change/Stat Diff</i>			<i>(3,351)</i>	<i>(2.43)</i>
Gross Total	74,398	78,976	138,063	100.00

Source: Table Thailand Energy Balance 2017^P, Department of Alternative Energy Development and Efficiency, Ministry of Energy

In 2017, Thailand's net electricity generation was 63.52% was from natural gas.



At the end of 2017, installed capacity for wind power had nearly tripled from 2014 levels, to 627.82 MW. Capacity for solar power was 2,692.26 MW at the end of 2017, which amounts to a doubling of generating capacity from 2014. The three years from 2014 to 2017 also saw increased capacity for power plants fueled by biomass, biogas, and municipal solid waste. With Thailand already nearly halfway to its goal of 6,000 MW of installed solar capacity by 2036, and both demand and supply of solar power showing no signs of slowing down, the target appears to require upward revision. A revised target should be expected in the PDP2018. A report issued in November 2017 by the International Renewable Energy Agency (IRENA) puts 17,200 MW of installed solar photovoltaic (PV) capacity by 2036 as a realistic objective.

One challenge, as demonstrated in other markets, is energy security and reliability. Good planning about all sources in the energy mix is required so that the greater reliance on renewables can continue to be achieved with confidence about security.

In 2015, the Ministry of Energy set ambitious targets for renewable energy development in Thailand. It appears now that the 2015 targets were too conservative, and that they will be met ahead of schedule. Thailand's pivot toward renewables satisfies each of the stated objectives in the PDP2015, namely energy security, economy, and ecology. While a number of policy challenges remain, the potential for continued growth in Thailand's renewable energy sector is evident.

From what we have heard/read about new PDP:

- the new PDP will call for a big increase in electricity generated by gas. More LNG receiving terminals may be expected
- planned coal fired power plants may be scrapped.
- no more long term plans for a nuclear plant.
- promotion of rooftop solar by allowing owners to sell to the MEA/PEA, up to a certain limit.
- Micro grid support

Greater reliance on renewable energy in all forms (not just primarily solar) is essential. JFCCT is keen to see incentives for all renewables, and major efforts to remove barriers (eg customs classifications) which prevent efficient deployment.

JFCCT is keen to know about continued promotion of solar power plants and other renewables, and how development of newer technologies can be promoted.



8. Agriculture

“40% of the workforce; 11% of GDP” is an oft-heard mantra. Agriculture is a new focus for JFCCT. There is BOI promotion for this sector including Smart Farming.

Issues include:

- Structural reform in production and distribution in the sector
- Agritech and upgrading agricultural practices; technology includes AI, IoT. Examples of how Agritech can be usefully deployed are in The Nation story⁹ of October 2018.
- Deployment of skills, expertise
- Market access
- Productivity enhancement, value-added (for farming such as organics, chemical-free, and/or contamination-free products), value-added (for processing so that there will be premium products), export-import, etc.
- Promotions intended to stimulate activity, not being taken up.

JFCCT (joined by Amcham) held a consultation with BOI on 7 November 2018. Key points:

- 1) The industry is in need of structural reform, in particular in production and distribution.
- 2) Incentives seem not to be attractive. There is an entire chapter in the BOI Guide, which includes smart farming promotion, but little or no take up. This needs review and re-alignment.

JFCCT is keen to explore further how the sector can be stimulated.

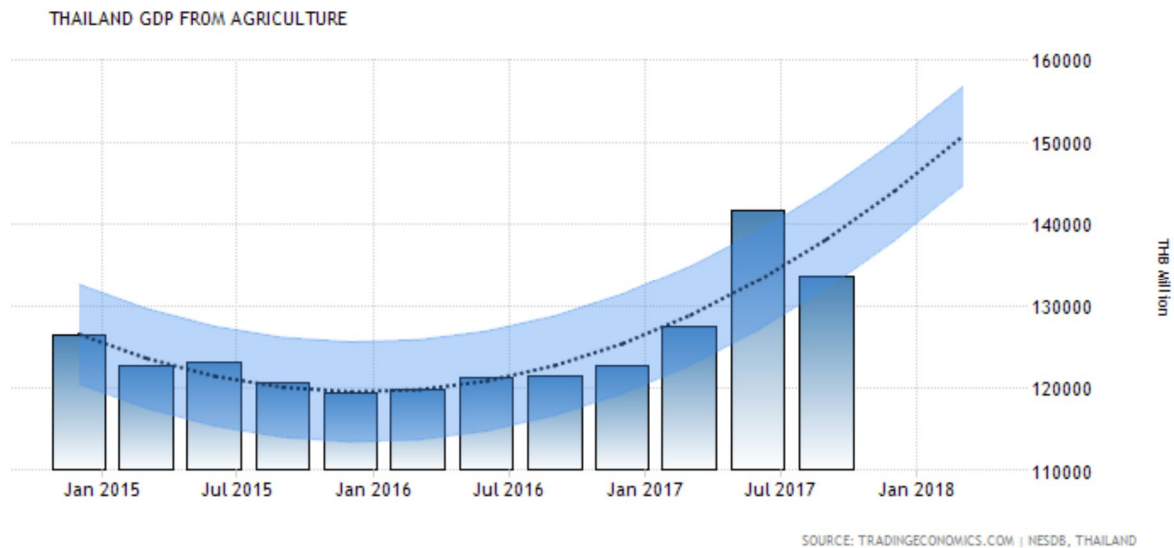
Agriculture - Background

The agricultural sector generated almost 100 percent of the country's export income, before the manufacturing sector began to play an increasing role in the Thai economy in the late 1970s.

Rice is the country's most important crop, with some 60 percent of Thailand's 13 million farmers growing it on fully half of Thailand's cultivated land. Thailand is a major exporter. Rice exports in 2014 amounted to 1.3 percent of GDP. Other agricultural commodities produced in significant amounts include fish and fishery products, tapioca, rubber, grain, and sugar. Exports of industrially processed foods such as canned tuna, pineapples, and frozen shrimp are on the rise.

⁹ <http://www.nationmultimedia.com/detail/Economy/30357013> “Agriculture in the age of digital technologies” 24 Oct 2018

Currently, almost 40% of the workforce are in agriculture sector, but the agriculture sector accounts only for about 10% of Thailand’s GDP (see also statistic from World Bank in *Medium Term Macro Economic Policy of Thailand*). This disproportion shows the urgent need for improvements. Technology advancements which can improve agriculture should offset this issue.



Structural reform in production and distribution

One of the focusses of Thailand 4.0 is the agriculture sector to promote and strengthen resources both for local and international use. Agriculture 4.0 aims to increase productivity by reducing inefficiencies, water consumption, fertilizers insecticides, and other chemicals and harmful effects on soil, animals, and people.

The government hailed 2018 as the year for agricultural reform. One aim was to elevate agricultural SMEs through the Start Up Farming SMEs Fund, open more sales channels for farm goods, encourage the use of technology to enhance growing and to create sustainability, additionally to focus on creating jobs and more opportunities for education both in and outside of the agricultural sector.

However, the cost of technology is still too high to justify additional productivity gains of small farms. This is highly problematic since the majority of Thai farms are small-scale. Though the costs of measuring equipment such as sensors and drones have decreased significantly, the costs of other needed technologies are still too expensive for the farmers. It requires government funding, also a kind of multi-stakeholder partnership platform that brings together companies, the government, universities, non-governmental organisations, and farmers to drive technological transformation – providing and sharing access to information, technology, markets and finance.

Some farmers lack adequate education to manage an efficient farming system. Most of the farmers in Thailand still tend to utilize outdated farming techniques and technology which



does not optimise capacity or output. The Thai private sector has helped to bring essential financial literacy and sustainable agricultural training to farmers. Coca-Cola in Thailand, the Thai Roong Rueng Sugar Group (TRR), Khon Kaen Sugar Industry Public Company Limited (KSL) and Kenan Institute Asia have been had a project¹⁰ for Thai female sugarcane farmers in Phetchabun and Uthai Thani provinces with up to 600 female farmers' participation.

The “Thai Niyom Yangyeun”¹¹ (Sustainable Thainess) programme, a Rural Development Programme which aimed to be a mechanism to drive development projects in each local government, by exploring the needs of people in different areas, and apply it to the plan and forecasted financial budget. However, this programme had a large budget and might not actually, eventually, address the major concerns.

Regulatory restrictions – Market Access

Agriculture is in List 1 of the FBA – not open to foreigners. However there are other means of participation through technology, expertise and certain products of value to the sector.

Since 2013, enabling the Business of Agriculture (EBA) has collected data on laws and regulations that impact the enabling business environment for agriculture. EBA provides key data on regulatory frameworks that are globally comparable and actionable.

According to EBA Index 2018, Thailand has been ranked **32** in seed, **16** in fertilizer, **24** in machinery, **29** in finance, **52** in markets, **53** in transport, **31** in information and communication technology (ICT), and **60** in water. Even though Thailand has been considered as agricultural country, it does not seem that markets access are optimally resolved. Transport and water management in order to facilitate and ensure the safety and quality of agricultural goods and services without being overly costly or burdensome on market actors. Overall, inclusive and sustainable practices for the sector would boost economic value.

Agriculture Technology and upgrading agricultural practices

Digital tools, Internet of Things (IoT), Artificial Intelligence and Embedded Technology have been brought up for almost every sector, including business where it directly affects the economy. The most significant impact of technology is greater productivity. On a quantitative basis productivity gains means more production at less cost; qualitatively it means more relevant product, and better alignment of inputs with those more relevant outputs.

Agriculture Technology (Agritech)¹² with the aim of improving yield, efficiency, and profitability. Technology provides the ability to grow more food with fewer environmentally-

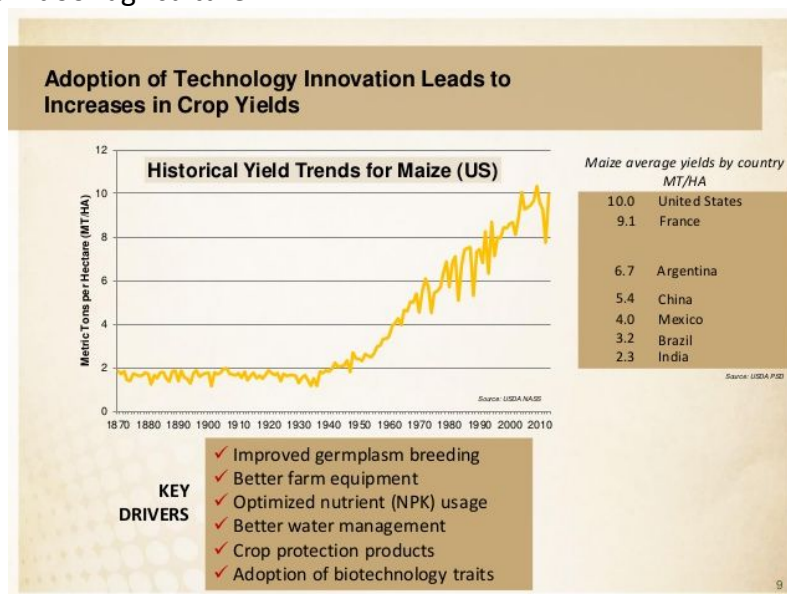
¹⁰ <https://www.kenan-asia.org/arming-female-farmers-with-two-essential-skills-to-lead-sustainable-businesses/>

¹¹ www.nationmultimedia.com/detail/national/30338452.

¹² <https://www.forbes.com/sites/robleclerc/2016/12/13/how-to-invest-in-agritech/#21d26ddb5969>

damaging resources. It allows agricultural supply chain to pull out the potential of their sector - farmers can apply the technology on the farm; distributors can apply it after harvest; and food companies can apply it during processing.

Agritech includes various technologies and innovations, for instance: data capturing devices and sensors, data analysis software platforms using artificial intelligence and machine learning, biotechnology and gene-editing, robotics and automation, and novel farming systems such as indoor agriculture.



According to the statistic from the United States Department of Agriculture, adopting technologies did increase in crop yields significantly in major countries. The technologies that had been applied affect positively on germplasm breeding, farm equipment, nutrient (NPK) usage, water management, crop protection products and biotechnology traits.

Enhancing Agritech, including developing its own Research and Development by collaborating with universities, academic centres and foreign investors need more development. To reduce the burden that might cause to the government itself, domestic or even foreign multi-stakeholder partnership should be considered to bring together all the sectors, for instance companies, the government, universities, non-governmental organisations, and farmers themselves to drive technological transformation. Collaboration with foreign companies and investors will not only bring in funding and technologies, it will help to develop Thai farmers and stakeholders in terms of skills in agriculture sector.

BOI Incentives

BOI introduced in September 2017 a new privilege structure for companies dealing with Agritech, so called “Thai smart farming services”, in order to support a national plan to change the country’s traditional farming to smart farming, and to help Thai farmers to become entrepreneurs and e-agricultural service. The plan expects to achieve higher farm productivity, and eventually accelerate GDP growth.



But lack of upgraded capacities for farm production i.e. technology and innovation is a barrier. In addition, labour cost as well as the land prices in Thailand have been rising, which may affect regional competitiveness unless steps are taken. Some ASEAN member states, especially Vietnam, have started to do better in many products as they introduce market mechanism and export more to global markets. Thailand has an ageing population, farm sector included. Young farmers need engage.

According to TDRI research¹³, liberalising imports of animal maize which will support poultry industry and encourage farmers to shift to grow other crops. Farmers also should work closely with universities and other research facilities.

Food Industry

BOI's 'Thailand Investment Review' ¹⁴ cover story 'Food for the Future' described the status of to food industry, which is much more healthy than agriculture. The World Atlas 2017 ranked Thailand the 16th largest food exporter in 2017 and the world's biggest exporter of a number of food products, canned, processed and fresh. Thailand's domestic food market is also strong.

The point can be made that the Agriculture sector could contribute more to Thailand's economy.

JFCCTs Recommendations about Agriculture

1. Structural and process reform in production and distribution to lower cost, and enhance productivity. Crop focus/value chain: approaches taken by the government on rubber for instance to find new local markets/applications is commendable. A similar approach could be evaluated for Palm Oil for instance.
2. Skills enhancement and farming practices
3. Regulatory: improving input registration processes, and most importantly local laboratory capacity (today local accredited labs are a major constraints to import new technologies).
4. Digital farming / smart farming and other Agritech applications by R&D and direct application.
5. Incentives: review BOI incentives in light of refreshed objectives of incentives.
6. *To explore:* some neighbouring countries have embraced a value chain approach sponsored by the WEF (GrowAsia : <https://www.growasia.org/>) to support bringing together different stakeholders of the same value chain to work towards farmer

¹³ Thailand Development Research Institute. "Thai farming lags behind its Asean peers" TDRI, 26 Feb. 2018, <https://tdri.or.th/en/2018/01/thai-farming-lags-behind-asean-peers/>.

¹⁴ TIR November 2018 cover story:
https://www.boi.go.th/upload/content/TIR_Newsletter_November_Final_5c18655a079e7.pdf



productivity and sustainability (eg input companies, public extension department, local collectors/traders, food or industrial companies, NGOs).

9. New International Business Centre (IBC) initiative

Revenue Department (TRD) announced a new International Business Centre (IBC) scheme under Royal Decree 674 on 28th December 2018. This unifies the former system of IHQs, IBCs, and ROHs into one streamlined International Business Center initiative.

It appears that this new law is a rectification and enhancement following the 2017 OECD “Harmful Tax Practices - 2017 Progress Report on Preferential Regimes” under the BEPS (Base Erosion and Profit Shifting) guidelines. There were five corporate tax regimes that were classified as “harmful tax practices” in the OECD’s 2017 Report, namely, (i) International Headquarters (IHQ); (ii) Regional Operating Headquarters (ROH); (iii) International Trade Center (ITC); (iv) Treasury Center (TC), and (v) International Banking Facilities (IBF).

An IBC is a company established under Thai law engaging in the following activities with its associated enterprises located in either Thailand or overseas:

1. Providing administrative and technical support services;
2. Providing treasury management services; and/or
3. International Trading Center activities

Associated Enterprises: one company participates directly or indirectly in the management and control of another, or holds at least 25% of the capital/shareholding of the other company.

IBC conditions are more onerous than under the previous schemes: paid up capital of at least THB 10m as under the previous schemes, but annual operating expenditures must be at least THB 60m in Thailand for new applicants or at least THB 15m for ROHs and IHQs which convert to IBC; at least 10 employees (or five employees if the applicant will only provide treasury services).

Without here listing all requirements and benefits, benefits of IBC status include reduced corporate income tax (sliding scale of 3% to 8%), a corporate income tax holiday of up to 15 years, tax exempt dividends from associated enterprises and personal income tax rate of 15% (subject to requirements).

As we understand it, companies may no longer apply to qualify as ROHs, IHQs or ITCs, and entities that currently enjoy benefits under these schemes may continue to do so under their



existing conditions until their current status expires, at which point they will need to apply to become IBCs (or alternatively could apply for BOI promotion under other schemes with similar privileges, but different conditions)

As we understand it, BOI will provide the non-tax incentives. JFCCT also understands that the scheme provides that BOI has a role to approve IBC status. Where a company registered as IHQ, ROH, ITC under BOI rules, seeks to be registered as IBC, JFCCT is interested to learn if there is any 'conversion' process proposed by BOI.

10. Digital Government

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

What has been needed is a 'whole of government' architecture with phased development of inter Agency and Citizen to Government (C2G) capability, building to this architecture. The Digital Government Agency (DGA; formerly EGA) is addressing this challenge which will be a major effort. His Excellency the Minister for Digital Economy and Society has announced how some 20 agencies will collaborate but a clear architecture and detailed plan does not seem to be visible.

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

JFCCT completed in September 2018 a very detailed review of the complicated Work Permit and Visa requirements, still largely on a paper, 'wet signature' basis, even ahead of any plan to put the entire work permit and visa system on line. These interim steps will assist in reducing the number of licences needed.

A **National ID** programme (under development via ETDA and others) should feature as an element of identifying system users and providing some necessary information. This has many attractive features but security and privacy are large issues.

JFCCT Recommends

- (i) a whole of government approach to digital government with a published architecture and specific road map with specific targets
- (ii) Public – private engagement on identifying requirements, functionality and this map
- (iii) That this effort be closely tied in with eliminating unnecessary steps and concepts (see Guillotine section).



ANNEX – Additional Background

Annex A: Guillotine project (“Simple and Smart Licence”); Sustainability of initiative: Rule of Law

Guillotine Project is a fast track way of reviewing and eliminating or revising unnecessary or burdensome laws and regulations.

In December 2016, JFCCT people crowd-funded the visit (held at TDRI) of a Korean expert from the PM office in Seoul. Korea experienced real ‘doing business’ ranking improvement and increased GDP growth when Korea initiated a regulatory guillotine unit. Lessons: strong political will, good database of laws. Thailand and South Korea are different, so the challenge on finding or making a good database of laws is evident.

The Project is on the JFCCT website¹⁵



Submissions of issues have been (and can still be made) using the process on the JFCCT website, or via the Simple and Smart Licence site at www.sslicense.go.th/th/page/item/index/id/1.

Some 1,000 issues, regulations or laws are expected to be processed by May 2019. The first batch of 370 of these can be viewed on the ‘Simple and Smart Licence’ site www.sslicense.go.th/th/page/item/index/id/1.



Stakeholder input can be done at www.sslicense.go.th/th/page/item/index/id/1. At this stage this is in the Thai language, but responses can be done in English or Thai. Often using a machine translation (such as Google Translate <https://translate.google.com/>) provides sufficient understanding of the proposal, then responses can be done in English or Thai.

The first area of focus for this Phase 2 was Work Permit and Visa. GU. GU and business representatives met on 6 September to review items selected by GU, using as a base the JFCCT

¹⁵ www.jfctt.org/major-business-issues/guillotine-project/



Work Permit & Visa master file v 7.1 (see Agenda item 4 above). Key topics included 90 day reporting, eliminating unnecessary steps and duplication, harmonizing requirements and avoiding repeat submissions.

In the medium to long term, all procedures should be fully on line, but that will take some time. The immediate solution is based on improving paper requirements, work flow and making some items (eg photos) submittable in PDF/JPEG etc. Before going fully on-line, editable PDF and other formats can be used.

Sustainability of the initiative

It is one thing to clean up existing laws but what if new laws follow a process of poor consultation, or concepts / operation which user groups find unworkable, or are not in the interests of enhanced 'doing business'?

Respect for the law in Thailand not as strong as it needs to be. Weak Rule of Law is an investment and 'doing business' obstacle.

On the reform front, in some areas fundamental structural issues are not addressed, there is no real structural reform, but just add-ons new laws placed on existing laws. The Guillotine project has shown that there are some uncatalogued and un cross-referenced laws, so the challenge is to know how to do reforms effectively. This is called reform but it is not. There are some but few exceptions where there is real structural reform.

Law making and consultation

JFCCT has proposed since 2006 a proper **consultation** process.

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

At least one of the public hearings should be in-person and with plenty of notice.

Proper consultation is a key part of the APEC Good Regulatory Practices (GRPs) –and is part of a sustainable solution for the Guillotine project. While s. 77 of the Constitution requires consultation, the details are often not wholesomely observed.



Poor consultation processes mean that industry buy-in is lacking. User groups feel little intellectual or moral ownership about the law – often they don't feel that they are responsible to honour the law.

Law Reform Commission

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

These elements are considered vital to the sustainability of the Guillotine effort. JFCCT recommends revisions to the law making process as soon as possible.

Arbitration

JFCCT also sees Arbitration as an important confidence-builder for investors. Making arbitration open to foreign lawyers would be one positive step. Smart Visa changes are a good step.

JFCCT published white paper on Arbitration and related issues such as Rule of Law¹⁶



Annex B - References:

For a glossary of terms, acronyms, concepts, see JFCCT website¹⁷:



¹⁶ <https://d2oc0ihd6a5bt.cloudfront.net/wp-content/uploads/sites/1871/2018/09/ARBITRATION-POLICY-JFCCT-EABC-v-1.8A.pdf>

¹⁷ www.jfctt.org/major-business-issues/glossary/