



Joint Foreign Chambers of Commerce in Thailand

BOI Consultative Session “Greener & Upskilled Economy” 10 November 2021

JFCCT Topics

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Joint Foreign Chambers of Commerce in Thailand

Discussion

II. JFCCT Topics



Drivers of today's topics

Keeping safe but being economically sound

A Greener economy, understanding BCG (Bio, Circular, Green)

Reskilling and upskilling

Competitiveness, Doing Business Easily and Services Liberalisation

JFCCT Topics



1. Services Liberalisation

2. Doing Business Easily/One stop service(includes work permit & visa); LTR

**3. Digital Transformation / Digital Government/
Digitalisation / Thailand 4.0**

4. Human Resource Development

5. Sustainability and BCG/ESG green Models

- **Bio/Circular/Green
Environmental/Society/Governance**



Joint Foreign Chambers of Commerce in Thailand

1. Services Liberalisation



FBA Background 1

Foreign Business Act 1999 regulates foreign ownership of companies by activities of companies. A foreign company has more than 49% foreign shareholding.

Activities in three lists:

List 1 – not open to foreign participation

List 2 – needs cabinet approval for foreign company participation

List 3 – needs a licence (Foreign Business Licence FBL; or if BOI promoted, Foreign Business Certificate FBC) issued by a committee within Ministry of Commerce.

List 3 is intended to protect Thai companies not yet ready to compete.

We focus on List 3, for which FBA provides for an annual review.

FBA Background 2

List 3 has been changed four times – 2013, 2016, 2017, 2019. Most are liberalisation net-neutral due other sector-specific legislation

Oct 2020 proposed change items to be removed from List 3, these are still being considered and there is no timeframe for their release

Telecommunications business (i.e., Type 1 telecommunication businesses in Telecommunication Business Act); *FBLs and FBCs for type 1 licences have been issues by MOC, NBTC issues the telco licence.*

Treasury centre activities relate to the management or exchange of foreign currencies between affiliated companies or within a conglomerate, and are regulated under the Exchange Control Law. *Earlier removals covered intra-group services (2019) and, earlier, financial services activity. There is sector-specific regulation for these activities.*

Software development business - development of software for specified activities, but broadly drawn. *The activity is BOI promotable The qualification still leaves a broad scope. There is no other agency specifically requiring a licence.*

FBA Background 3 – three layers of regulation



List 3 reviews have not been effective for their stated purpose, but there is more complexity. We focus on first row.

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

We will come back to this later under Work Permit and Visa.

FBA Proposal

Suspend List 3 for three years, allow investments in any sector not prohibited by List 1 or List 2 or other sector specific legislation

In that period permanently remove certain parts of List 3, proposed (which could be done in stages)

Logistics

Education

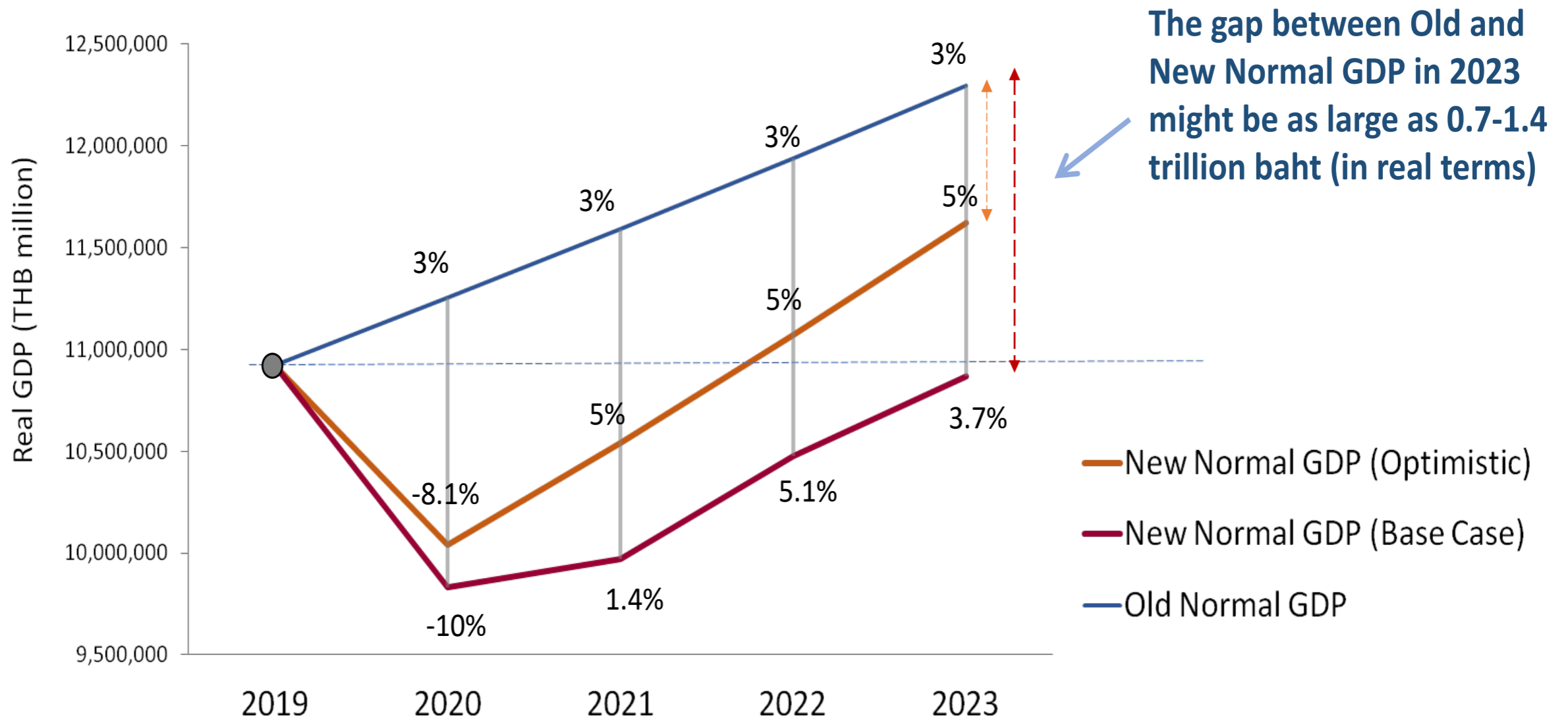
Engineering

Agriculture

Item 21

At end of three years: suspension ends, the result is a reduced List 3 and investor protection (grandfather status) for investments made in the suspension period.

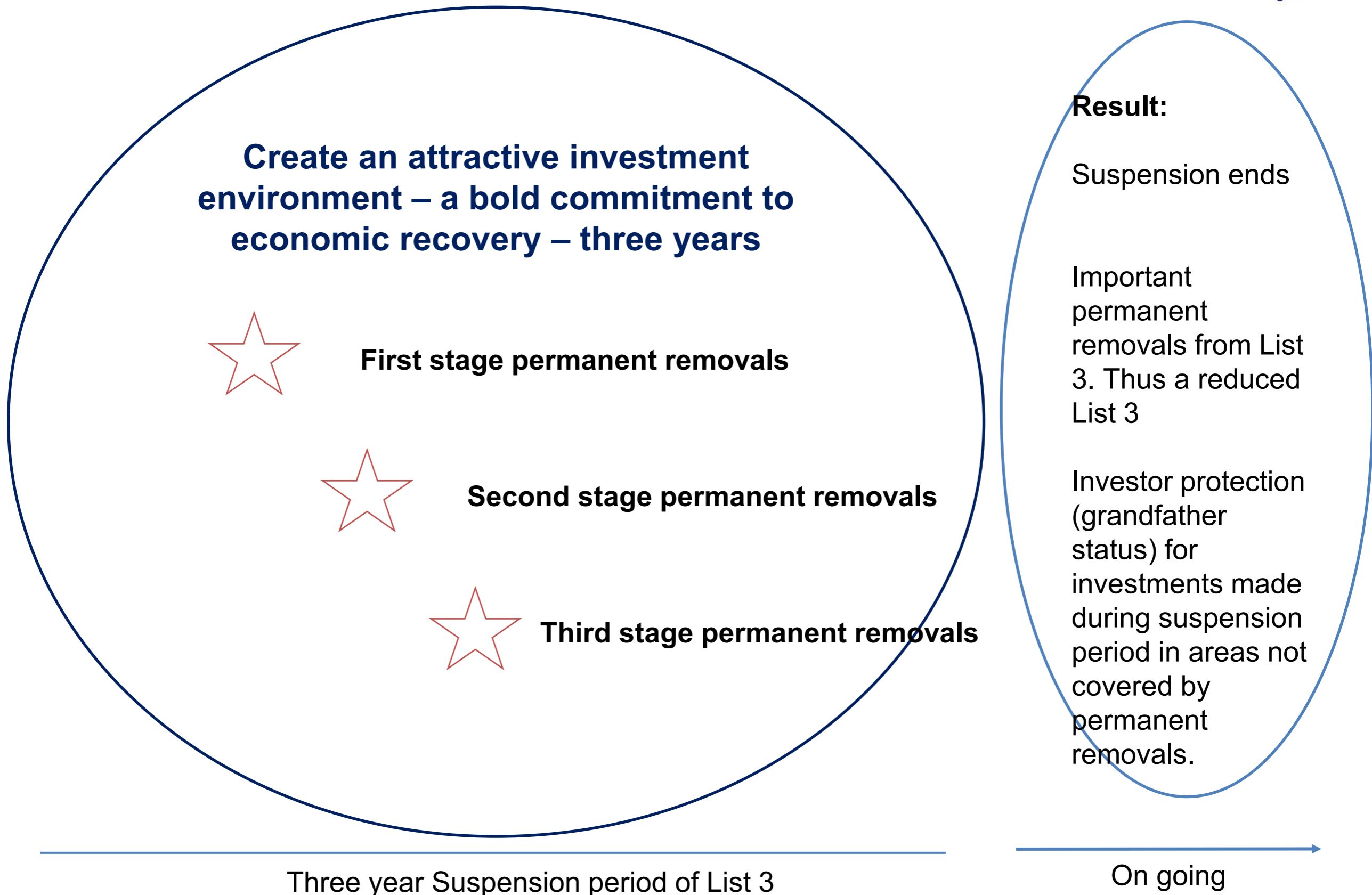
FBA Background



GDP not likely to be at pre COVID 19 levels until after 2023

Source: Dr Charl Charl Kengchon, Executive Chairman, Kasikorn Research Center, BOI webinar 5 August 2020

FBA Proposal – schematic



Advantages of FBA Proposal

Flexibility will support ***business continuity***- companies can take in new investment, new partners, restructure

Stimulates ***FDI*** – new investments

Enhances ***competitiveness, ease of doing business***

Saves ***Thai jobs***

Alleviates pressure on use of ***economic recovery budget***.



2. Doing Business Easily/One stop service(includes work permit & visa); LTR



Safe Opening 1

A workable calibrated approach with three avenues:

- One / two nights' quarantine AQ or SHA+ – vaccinated from low risk economies
- Seven days – sandbox SHA+ – vaccinated from other
- Ten days – AQ – for unvaccinated.

Thailand Pass should come to have benefits, a step ahead from COE; we suggest keep it simple and avoid trying to make it do too much. In time can some documents be dispensed with? It was launched without normal testing so there are some teething problems. The Prime Minister has requested fixes. User groups are tourists and residents of Thailand.

Thailand Pass does not accept PDF; we caution against government-mandated pre-payment of hotel without government-mandated consumer protection rules – eg full refund less say 3% if cancelling is beyond control of traveller.

Morchana won't accept COE number, only Thailand Pass #; <https://tp.consular.go.th/>

Safe Opening 2

The world is speeding to digital vaccine certificates or passports.

In addition to work in Thailand, ASEAN and WHO/ICAO are working on models at their respective levels for international recognition of outbound and inbound travellers.

We should avoid creating divides. The yellow booklet as a paper tool may work for a while alongside digital developments.

Background

Visa and Work Permit in Thailand

Work Permits and Visas : single most referred-to administrative burden in doing business and disincentive to foreign investment. Some go back 45 years (1972)

Not just about convenience or ‘ease of doing business’ but:

- impede Thailand’s reputation as an attractive place to invest
- out of synch with other aspirations for re-skilling the economy
- Some electronic WP but manual processes
- COVID 19 situation mandates avoiding people contact – but the opportunity to digitalise fully was not taken.

Visa and Work Permit in Thailand - Reform

Needs a strategic plan

Never included in the old World Bank 'Doing Business'

Work of Guillotine Sub Committee in moving issue to Cabinet may bear fruit.

We will not reach Thailand 4.0 in our lifetimes unless the pace of change quickens

Suggestion: Eliminate unnecessary/de-duplicate; then process re-engineer, then digitalise.

JFCCT maintains a master file. Here just some sample issues

Visas – Why is it necessary to leave Thailand just to apply for a visa?



Change of visa type to Non B

Change of objective (purpose) of being in Thailand is problematic, but can be done in some cases, with notations and informally

Tourist to Non B is possible with an informal notation ('allowed to get WP'). Apparently does not apply to STV as STV has a probation.

..

Change of visa type: Adult can change visa type only if under 50 years old where children turning 20.

Hand over

Visas - is it necessary to be present in person?



Present in person?

Can apply from overseas and visa can be issued while overseas (eg Non B, Non O, Tourism TR).

BIG PICTURE QUESTION: What about renewal from overseas or change while in Thailand?

Why not be able renew from anywhere in all cases?

Change of job Sections 51 – 53 of the Labour Decree allow for change of job. But difficult in practice. Cases are change from Non B to Non B, from Non O to Non B, for example.

Does Non O to Non B require spouse to be Thai?, If so, we suggest that that requirement be removed so that the change is not restricted by nationality.

Starting new job within 30 days; we suggest longer.

Visas - Students



Talented, smart, young people not Thai citizens, often born in Thailand or came to Thailand at an early age who have studied only in Thailand or who have studied in Thailand and then abroad.

They know the culture, language and are sensitive to local norms, customs and mores. They can be invaluable to the development of Thailand not only economically but also as a society.

- .. Let us not make it difficult for them at age 20. We suggest
 - i) Automatic extension of one year as an immediate response for 'O' visa holder overseas
 - ii) On line processes to avoid personal visits. Interviews can be done by electronic platforms.
 - iii) Pathway to taking up Thai citizenship, with processes starting at age 19, so that dual citizenship would be allowed by age 20.
- i) For 'O' visa holders with a family member in Thailand, say the person is abroad studying, an extension (similar to that offered to Residents in 2020) so that they can resolve the situation on their return. Outer limit might be the earlier of say 60 days after return to Thailand, and 2-3 years.

Visas - Retirees



Retirement visa has self-sufficiency requirements.

Income element is necessarily passive income or derived overseas.

Allow part time work eg up to 20 hours per week, paid. No limit for volunteer work, No restriction on type of work.

They can contribute a lot to the economy including knowledge and skills; most have lived in Thailand a long time.

Same recommendation in LTR context

Visas - Permanent Residents

Requiring a work permit for Permanent Residents – unnecessary and burdensome overhead which takes a long time to be approved. Thus the test is already high.

Out of line with regional practice.

Recommend: Permanent Residents (PR) do not need a work permit; or the right to work is inherent in PR status.

90 day reporting

Change to reporting only on change of address, not each 90 days

Simple on-line tool which supports all cases, even those late (levy a fine instead of defaulting to an in-person visit)

JFCCT mid October made a detailed 'how to' suggestion, including legal analysis and a case study about using the reporting system. If that can't be done, political will to change the law.



Joint Foreign Chambers of Commerce in Thailand

Rationalisation\Harmonisation, De-Duplication



Work Permit & Visa- Rationalisation & De-duplication and One-Stop.

Chart developed 2018; updated 2019; 3 December 2020; updated 2021

Rationalisation is about:

- a) One visit only
- b) A true 'one stop' experience in all respects
- c) Broaden the range of user groups for OSOS, currently:
 - BOI promoted
 - Turnover over THB 30 m – with Bangkok postcode?
 - Some Other cases

Plan to cover all skilled labour?

De-duplication is about eliminating duplicate procedures, forms etc.
Master slide, then SOLUTIONS: CUT, COMBINE or EASY ON LINE

Work Permit & Visa – Harmonisation - substance

Aspect	Work Permit	Visa
Capital requirements	THB 2m paid up per foreign employee is current requirement; Determine how this can be removed, at least for skilled labour	
Staff ratios	Not required by Employment Dept	1:4 ratio applied in most cases where not exempt (eg via BOI promotion) – required by Bureau of Immigration, relevant to work. Eliminate this entirely
Duration (=Validity period; exact start and end dates same)	Varies, depending on visa /residency status	Frequently granted on ‘provisional’, monthly basis while work permit is being processed; then becoming unsynchronized as work permit is issued and later renewed.
Min lead time to apply	Currently cannot apply for new/renewal earlier than 30 days prior to expiry, should be 90 days.	Not clear but should harmonise
Location of application and pre-conditions	Requires first having a non-immigrant ‘B’ visa before submitting an application. Application should be permitted regardless of current visa type.	Appropriate visa should automatically be issued when work permit is approved, or some similar mechanism in keeping with harmonization objectives.

Work Permit and Visa Filing Requirements



Visa & Work Permit control v 4.0 (3 December 2020) - Add Easy On Line, COMBINE, CUT for both Ref 29, Ref 30.										
Ref	List of documents or other items	Work Permit (WP) Requirements	Visa (V) Requirements	Easy On-line	Cut	Combine	Cert*	Presently Submit Annually / for each renewal	Change to submit one time only	NOTES
4	Application form Bor.Tor. (WP) 25 combines with ten categories of back up documents (part 4); similar requirements in other WP forms	x		x						
5	Application form TM.7 , new application & renewal		x	x		X		X	x as combined form	
6	Application form TM.8 (re- entry form single & multiple)		x	x		x		x		
7	Three (3) photographs, size 3x4 cm of applicant	x							X	Electronic version - JPEG or other
8	Three (3) photographs, size 4x6 cm of applicant		x	x		X		X (Visa only)	X	
9	Copy of Passport data page + TM6	x	x	x		X		X	Use first submission unless new PP	
10	Copy of Work Permit		x	x				X (Visa only)	X	Note: currently must have WP to get a Visa
11	List of all other foreigners in the company with work permits	x	x		X			X (Visa only)		DoE would have this information; justification for requiring it not clear
12	Organization chart	x	x		X			X (Visa only)		
13	A letter explaining the reason for hiring foreign employees		x		X			X (Visa only)		Include as part of application form. If reason for letter is to demonstrate why a foreigner is required for the job, i.e. skill or other relevant criteria for the job not available in Thailand, this should be required first time only. Is this so?
14	Certificate of employment prepared in accordance with the form prescribed by the Immigration Bureau (Sor.Tor.Mor.1)		x	x				x	X	
15	Confirmation number of foreign employees form		x	x				X		Include as part of application form
16	Form of the employment certification	x			X			x (work permit only)	X	
17	Company registration (not more than 6months old)	x	x	x		X	*	X		Is there an on-line look up means (DBD MOC) which confirms incorporation status? Purpose? - to show whether more than 49% foreign owned?; replace with a company or applicant statement with check box options for Thailand-incorporated entity: eg (i) 49% or less foreign owned; (ii) more than 49% foreign owned; (iii) BOI promoted with FBC under FBA; (iv) holds FBL under FBA or other relevant licence,
18	List of Shareholders (not more than 6 months old)	x	x		X		*	X		
19	Fianacial Statement Submission (Sor Bor Chor 3)		x		X		*	X (visa only)		19, 20 for tax purposes now?
20	Copy of financial statements of the Company (the Company's balance sheet)	x	x		X		*	x latest version		
21	Corporate income tax returns (Form Phor. Ngor. Dor. 50)	x	x		X		*	X (visa only)		It is enough to show that the company exists; paid up capital should be removed as a criterion
22	Copies of 3 most recent Monthly withholding tax returns (Form Phor. Ngor. Dor. 1) + receipt of certification		x		X		*	X (visa only)		
23	Copies of the applicant's annual income tax return (Form Phor. Ngor. Dor. 91/90)	x	x		X		*	X		
24	Copies of 3 most recent monthly social security contributions return filed with the Social Security Office (Form Sor.Por.Sor. 1-10) & present original		x		X		*	X (visa only)		
25	Copies of 3 Most Recent Monthly VAT returns (Form Phor. Por. 30)		x		X		*	X (visa only)		
26	Special Business Tax submission (PhorThor 40), if any.		x		X		*			
27	Copy of VAT Registration (Phor.Por.01) and Tax Refactor Registration Added (Por Por 09)	x			X					Not relevant if not obliged to register for VAT
28	Copy of factory licens and/or license the business (if any)	x			X			X		
29	Copy of identity cards of the authorized signatory of the employer.	x	x		X			X		Recommend 'cut' as this kind of proof should not be necessary. If confirmation required in specific cases, details of authorized corporate signatory already available via DBD.
30	Copy of identity cards of the authorized signatory of the foreign employees	x			X			X (WP only)		
31	A local medical certificate or the applicant	x		x				X (WP)	X	Submit only first time?
32	Map showing the location of the Company		x		x			x (visa only)		
33	Photographs of the exterior of the business premises showing : office building, office desk, Thai staff .		x		X			x (visa only)		
34	Other supporting documents required by the competent authority (Sor.Tor.Mor.2)		x	X				x (visa only)		File on line by scanning?
35	Acknowledgment of Penalties for a Visa overstay.		x	x				x (visa only)		Should be part of standard terms; not a separate form
36	Copy of Educational certificate must be translated into English or Thai	x		x					X	Should only be required one time if no change
NOTES										
Rows 9,11,12,17,18, 20, 21,23,29 apply to both WP & V. Recommend 'combine' or 'cut' each - see notes.										
* Visa Requirements: Document no. 17, 18, 20, 21,22, 23, 25 must be certified true copy by authorized official of government unit concerned. See "Cert" column *, but most are recommended to be Cut										
Where an item is currently required annually (column L) but is recommended to be 'cut' (column F) ; the recommendation does not also propose that that document be done one time (column N)										
All documents are required to be stamped with Company stamp and signed by Managing Director (wet signature) Change to rely on PDF format; many documents should be on government records										
Age of documents: practice varies: OSOS seems to accept up to 6 months old - see rows 17 & 18, at Immigration, DoE 3 usually 3 months.										
Easy on line candidate means that at the very least a system of filing an editable PDF, photos etc could be done in the short term. Filing on line by completing on line fields may take some process re-engineering										

Source: submission 24 Sep 2018 to Guillotine Unit;; updated 3 December 2020

Work Permit and Visa Filing Requirements – ‘CUT’



Visa & Work Permit <small>control v 4.0 CUT</small>				
Ref	List of documents or other items	Work Permit (WP) Requirements	Visa (V) Requirements	Cut
11	List of all other foreigners in the company with work permits	X	X	X
12	Organization chart	X	X	X
13	A letter explaining the reason for hiring foreign employees		X	X
16	Form of the employment certification	X		X
18	List of Shareholders (not more than 6 months old)	X	X	X
19	Fianacial Statement Submission (Sor Bor Chor 3)		X	X
20	Copv of financial statements of the Company (the Company’s balance sheet)	X	X	X
21	Corporate income tax returns (Form Phor. Ngor. Dor. 50)	X	X	X
22	Copies of 3 most recent Monthly withholding tax returns (Form Phor. Ngor. Dor. 1) + receipt of certification		X	X
23	Copies of the applicant’s annual income tax return (Form Phor. Ngor. Dor. 91/90)	X	X	X
24	Copies of 3 most recent monthly social security contributions return filed with the Social Security Office (Form Sor.Por.Sor. 1-10) & present original		X	X
25	Copies of 3 Most Recent Monthly VAT returns (Form Phor. Por. 30)		X	X
26	Special Business Tax submission (PhorThor 40), if any.		X	X
27	Copy of VAT Registration (Phor.Por.01) and Tax Refactor Registration Added (Por Por 09)	X		X
28	Copy of factory licens and/or license the business (if any)	X		X
29	Copy of identity cards of the authorized signatory of the employer.	X	X	X
30	Copy of identity cards of the [authorized signatory of the] foreign employees	X		X
32	Map showing the location of the Company		X	X
33	Photographs of the exterior of the business premises showing : office building, office desk, Thai staff .		X	X

Work Permit and Visa Filing Requirements - COMBINE

Visa & Work Permit control v 4.0 COMBINE					
Ref	List of documents or other items	Work Permit (WP) Requirements	Visa (V) Requirements	Combine	
4	Application form WP.25 -New application, and renewal; now one but there are other renewal forms eg WP 30 (s.67)	X		X	
5	Application form TM.7 , new application & renewal		X		
6	Application form TM.8 (re- entry form single & multiple)		X	X	
7	Three (3) photographs, size 3x4 cm of applicant	X		X	
8	Three (3) photographs, size 4x6 cm of applicant		X		
9	Copy of Passport data page + TM6	X	X	X	
17	Company registration (not more than 6months old)	X	X	X	

Work Permit and Visa Filing Requirements – EASY ON LINE

Visa & Work Permit <small>control v 4.0 - EASY ON LINE means SEEMS EASY TO PUT ON LINE</small>				
Ref	List of documents or other items	Work Permit (WP) Requirements	Visa (V) Requirements	EASY ON-LINE
4	Application form and renewal WP.25 -New application, other renewals eg WP 30 (s.67)	X		X
5	Application form TM.7 , new application & renewal		X	X
6	Application form TM.8 (re- entry form single & multiple)		X	X
7	Three (3) photographs, size 3x4 cm of applicant	X		X
8	Three (3) photographs, size 4x6 cm of applicant		X	X
9	Copy of Passport data page + TM6	X	X	X
10	Copy of Work Permit		X	X
14	Certificate of employment prepared in accordance with the form		X	X
15	Confirmation number of foreign employees form		X	X
17	Company registration (not more than 6months old)	X	X	X
31	A local medical certificate or the applicant	X		X
34	Other supporting documents required by the competent authority		X	X
35	Acknowledgment of Penalties for a Visa overstay.		X	X
36	Copy of Educational certificate must be translated into English or Thai	X		X

EASY ON LINE means before full process re-engineering, file by uploading files – editable PDF, photos etc.

Work Permits 1 – ‘Work’

Labour Decrees June 2017 and March 2018

Foreign Employment Act repealed; some changes to ‘work’

But still too restrictive, still does not support regional companies holding meetings where some activity but not others is ‘work’

RCEP – Business Visitor concept should not need a work permit.

Some BOI promoted company relaxations

But we recommend expanding to allow all activity short of local employment. JFCCT has the text of the recommendation.

For most of this a person should not need even a WP 34 (previously WP 10)

Work Permits – reference point

Announcement of the Dept of Employment, Ministry of Labour, with Omnibus rule changes 30 September, gazetted 20 October, with effect from 1 Nov; 1 Dec 2020; Feb 2021.

- Change from WP 10 (previously WP 11) now WP 34 for urgent and necessary work.
- Merging into WP 25 of WP 1 (general WP application) and WP 5 (renewal)
- WP 3 which is like an in-principle approval.
- Other changes including some electronic forms of submission.

Reference law: June 2017 Decree No. 1 as amended by Labour Decree No. 2 of March 2018. We call this the 'Labour Decree'. This replaced the Foreign Employment Act.

WP 32 requirements extract s.60

โดยคนต่างด้าวจะนำเอกสารและหลักฐานดังต่อไปนี้มายื่นเพิ่มเติมเมื่อได้เดินทางเข้ามาในราชอาณาจักร

The foreigner must also submit the following documents after entering the Kingdom

- 4.6 สำเนาหลักฐานการอนุญาตให้เข้ามาในราชอาณาจักร
A copy of proof showing permission to enter the Kingdom
- 4.7 ใบรับรองของผู้ประกอบวิชาชีพเวชกรรมตามกฎหมายว่าด้วยวิชาชีพเวชกรรมที่รับรองว่าผู้ยื่นคำขอไม่เป็นบุคคลวิกลจริต
หรือมีจิตฟั่นเฟือนไม่สมประกอบและไม่เป็นโรคตามที่กำหนดไว้ในกฎกระทรวงซึ่งออกตามความในมาตรา ๖๔/๑
A certificate from a medical practitioner licensed pursuant to medical professions laws, certifying that the applicant is not
a person of unsound mind or a person who is mentally disturbed or mentally impaired and that the applicant also does not
have prohibitive diseases as indicated in the Ministerial Regulation issued under Section 64/1
- 4.8 สำเนาเอกสารแสดงการอนุญาตหรือการรับรองให้ประกอบวิชาชีพ ในกรณีเป็นงานที่กฎหมายกำหนดให้ผู้ประกอบวิชาชีพ
ต้องได้รับการอนุญาตหรือการรับรอง
A copy of professional license/ certificate in case of work which the practitioner is legally required to hold a professional license or
have passed professional certification

Work Permits 2



Two situations:

WP holder overseas –a new arrangement allows for employer to renew while the employee is overseas. However this needs rationalisation to make it work

One solution is extending the WP. Analogy is visa extensions; also Resident category – who can renew once they have returned, but being away does not mean that the status is cancelled.

Adapt the WP 3 process to support permission to work with in principle letter or WP 3 process.

WP should be issuable and usable while employee is overseas. Employee in many cases can be doing work on line to support the company's continuity. But some documents are only accessible while back in Thailand. See WP 32.

Work Permits 3- New ways of working

New way of working - employers ceasing to provide desk or work space based on total headcount. The cost saving is essential for economic survival.

WP should recognize (i) ***working away from the office***, (ii) ***working from home*** (iii) otherwise teleworking. Regulations should support this, otherwise there may be unintended breaches. Government policy requires not coming to the office for COVID 19 related reasons.

.. Serviced offices (example Regus, ServCorp) and co-working spaces is becoming more popular. Some firms have their registered office at such locations. Such providers typically offer multi-location use of facilities so that employees could work at different locations from time to time. Regulation should support this.

To confirm that working from home (which may not be listed as a work location, but a residence location),

To confirm that working away from location in the WP at a location not specified would not amount to a breach.

Hand over

Staff ratios : capital invested



Staff ratios 4:1 Immigration Bureau requirement

When applying for a work permit, Immigration Bureau requires that the company employ at least four Thai nationals for every one foreigner employed. This is despite the Employment Dept. having advised Immigration that it no longer enforces those ratios itself.

SME's providing or developing digital technology or other new products or services often start up with one or two people plus intellectual capital, not cash invested in plant and equipment or a large staff. These companies are therefore unable to hire foreign technical experts, even when there are no local resources available with the necessary skills.

Issue referred by Guillotine Sub Committee to Cabinet to consider

Capital invested

Further, for many start-ups and SME's there is little need for large capital investment 2M THB per WP (of if applicant has Thai spouse, 1M THB). Requiring high invested capital as a prerequisite for the ability to hire foreigners does not enhance the ease of doing business, nor help advance the achievement of Thailand 4.0 goals.

Skilled and Unskilled – dual regulation illustration

Skilled / Semi-Skilled (eg “Employment Pass”)

High pay minimums, qualifications
(academic, vocational + experience)

Health – self declare
Up to 5 years

Longer period (eg 4-5 years)

No 90-day reporting
report changes only

Unskilled (eg “Work Permit”)

Lower pay minimums, no
qualifications

Health – self declare +
screening, tests

Shorter period.

Revised 90-day reporting
(eg on line with employer
assistance)

Example is Singapore

Urgent and Necessary Work

WP 34 (was WP 10), urgent and necessary work.

DoE says this is now a registration/reporting function rather than seeking permission. That is, the permit is issued on filing. Notification only.

Are there any known impediments, can a clear statement be made ?

See about 'work' there are many situations where no work permit should be needed.

UNSKILLED



Labour MOU recognizes unskilled / semi-skilled labour - covers workers from Laos, Cambodia, and Myanmar in unskilled or semi-skilled categories (workaround arrangement)

Two types of registered labour, Non-MOU type and MOU type., both in force, but the MOU type is applied for new applicants.

- 1. MOU Type:** Employer must import labour through the agent from the counterpart country and pass through the official entry point. Worker must hold passport or travel document. Worker can change employer without leaving the country to process the new document.
- 2. Non-MOU Type:** This category released during the previous administration to legalize all illegal immigrant labour by allowing all immigrant workers to identify themselves and issue passport/travel document with Embassy of each economy. This group of workers obtains work permit and visa in the form of, so called, “Pink Card”. Originally they can’t change employer without returning to the origin country and re-enter as normal MOU process. But due to the COVID-19 pandemic, DoE allows to change the employer without leaving the country and extend the permit until March 2022.

UNSKILLED - issues



1. Location of renewal work permit and visa: Construction site and report/register with the Provincial Labour Office and the Provincial Immigration Police where the construction site is. The company must show the construction contract and map of construction site and labour camp along with all company registration documents. However for renewal, labourers must return the province where the company registered. **Solution:** Company to assist with renewal at office near construction site.
2. Medical certificate according the list of prohibited diseases: In some provinces, the local hospital can't perform some tests according to the prohibited diseases. Renewal means travel to Bangkok.. COVID-19 is now on list of prohibited diseases, not all hospitals can test the COVID and it is costly which become a burden to employee. **Solution:** Revise list of prohibited diseases
3. Clarification on condition of work permit and visa whether the labour has to return to his/her country after the work permit and visa under the MOU and Pick Card expired. **Solution:** Renew without leaving Thailand

Complexity of regulation – three layers



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

Consider the middle layer – now the April 2020 Notification

Complexity of regulation for professions

39 Professions in 1979 legislation- April 2020 Announcement puts same restrictions into four categories, which may support opening for treaties. JFCCT identified these 7 or so of interest:

Agriculture

Brokerage

Auction

Architectural services.

Civil Engineering

Tour Guide – Tour Facilitator

Legal services (only for Arbitration)

Example: Thailand to support regional professional services – Accounting.

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

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

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

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

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

Guillotine – Financial Benefits – 4 projects

Bank of Thailand (BoT) 400 recommended changes to laws, and implemented several recommendations about FX, Saved THB 1.1 bn in annualized costs going forward (see next slide). *October 2017.*

Securities and Exchange Commission (SEC) - training using the “Regulatory Guillotine” concepts and methodology as well as the processes for reviewing existing regulations. Outcome strengthened regulation-making. *December 2017.*

EoDB (Ease of Doing Business) 10 criteria in the World Bank “DB”
Over five years due to remeasurement & improvements, Thailand moved from 20s to 40s . 21st out of 190 countries for 2020 ranking by improving on some key activity but only 2 elements of 10 were under 21. Work Permit/Visa and gov’t contracts not included in the 10. *2019. WB EoDB is ceased*

Simple & Smart License Project

1,094 licenses analysed and full recommendations made (revise/remove/de-duplicate). Estimated saving to business THB 64bn if all implemented. *2018 - 2019*



JFCCT involved in Guillotine development since 2016

2020 Developments



September: PM Office Notification establishing Fast Track Law Reform Committee

September: Release by STO of GU Summary report (TDRI Report) 1,094 issues

October: PM Office – Dr Bawornsak chair + 8 Main Committee members

October: TDRI (with JFCCT and EABC) Public Seminar

October: Five point Guideline from Cabinet: “Guideline amendments to laws obstructing e-service development” where laws lack digital enablement

November: Order appointing 9 Sub Committees, including:

Guillotine, Digitalisation, Law Reform to support economic recovery

December: Cabinet Order: Reg Guillotine project a priority; implementation targets 2021, 2022

2021: Work of Guillotine Sub Committee meetings; Digitalisation Sub Committee

Summary Report released by STO Sep 2020



Annualised savings assuming all 1,094 issues implemented as recommended

134 Billion Baht for the private sector (Table 14) (i) Compliance cost – engaging professionals to prepare applications, filing fees, travel cost, cost of time of key people in preparing applications etc. (ii) Opportunity cost – cost of capital, cost of time for waiting license approval

9 Billion Baht for the government (Table 15) (i) Personnel cost in time spent processing and meeting / planning time (no assumptions about headcount as staff could be re-deployed) (ii) Not assessing an opportunity cost

Guillotine Sub Committee – about the 1,094

PROGRESS UPDATE ON TDRI REPORT PUBLISHED SEPTEMBER 2020:

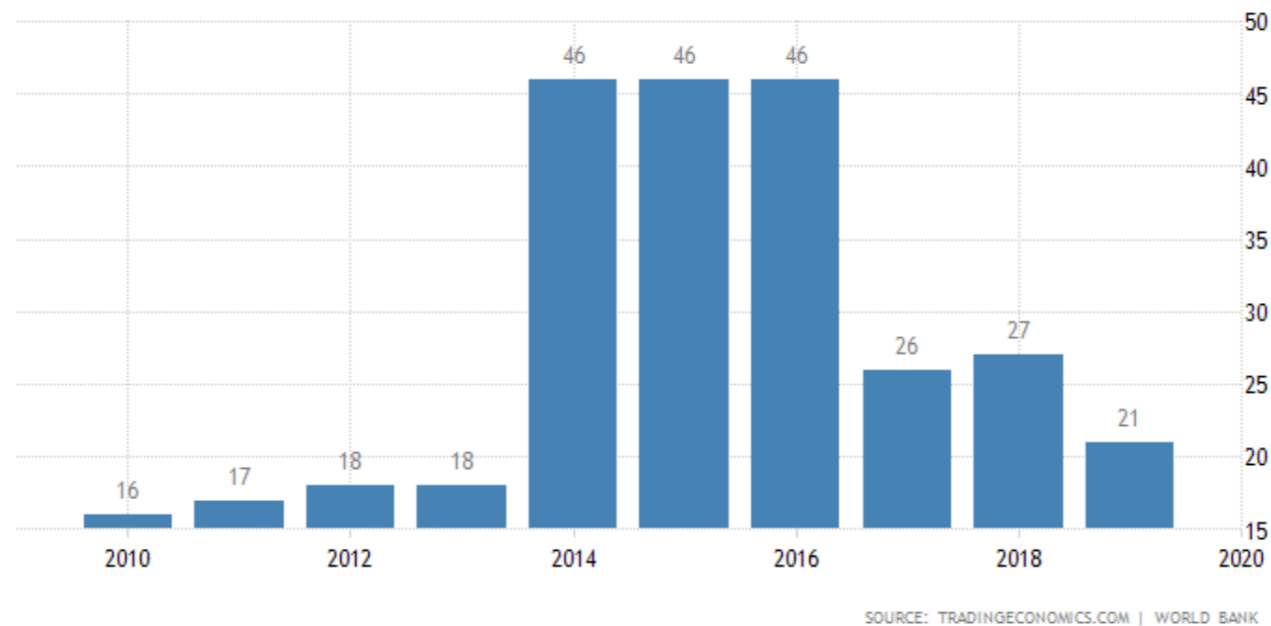
Group	Procedure	Percentage
Group 1: Completely reviewed and processed by the agency; Agency ‘Accepts’ or ‘Rejects’. ‘Accept’ does not mean implemented yet.	424	38.76%
Group 2: Under legislation process – implementation not certain.	136	12.43%
Group 3: Work-in-process under the sub committees	378	34.55%
Group 4: Work-in-process under agency with unclear statement	58	5.3%
Group 5: No feedback or progress update	98	18.56%
Total	1094	100%

- **Group 3 and Group 4** request Cabinet to mandate for government agency to look at ceasing or revising the law. Group 3 includes foreign employment and welfare. Group 4 includes 4 : 1 ratio (Thai to foreigner ratio) and 2 million baht registered capital per work permit;
- **Group 5 Agencies not responded to the Sub Committee;** Main Committee to issue letter to urge the Minister asking agencies to respond

Rankings

Rankings can be a good guide. Sub indices can be useful

World Banks' EoDB – 10 specific criteria, do not include hiring foreign workers (work permit/visa) or contracting with government. Thailand ranks well on protecting minority investors and Getting Electricity; not so well on Paying Taxes and Starting a Business. For 2020 – rank 21, but only two were under 21, all others well over – from 24 to 68



EoDB may not be the most appropriate measure for operating a business. Now that the EoDB ranking is ceased, consider other rankings about competitiveness etc.

Other Rankings

Chandler Good Government Index	Thailand: 2021: 43 rd / 104.
IMD World Competitiveness Ranking URL here	Thailand: 2019: 25 th / 63. 2020: 29 th / 63 2021: 28 th / 64
IMD Digital Competitiveness Ranking URL here	Thailand: 2019: 40 th / 63. 2020: 39 th / 63 2021: 38 th / 64.
WEF Global Competitiveness Index URL here	Thailand: 2018: 38 th / 141. 2019: 40 th / 141.
WIPO Global Innovation Index URL here	Thailand: 2019: 43 rd / 129. 2020: 44 th / 131. 2021: 43 rd / 132.
World Bank Human Capital Index 2018: URL here	Thailand: 65 th / 157. This measures productivity of next generation workers relative to benchmark of education and full health

Consider the Competitiveness rankings;
these rankings have helpful sub-indices and elements

- i) Some positive features in the LTR proposals, but they do not address existing barriers regularly encountered by legitimately established, long-term foreign residents living and working in Thailand who are already contributing to its economic and social well-being. LTR does not tackle those issues (unless for LTR visa holders) nor will they contribute to ease of doing business.
- i) What is the objective of LTR? Once qualified for the programme, what is expected overall of those in each category? The amounts of investment required just show a level of commitment but not major investment Is this conflating money with skills ?
- ii) 90 day reporting change for all not just LTR. JFCCT has provided detailed suggestions 18 October. If these are not possible, we suggest changing the law.
- iii) Right to work in all categories. Should not be a need for a Work Permit, even electronic or automatic (keep it like Smart Visa – no separate work permit). Just needs better explanation, not a retro step.
- iv) What is target and permitted work? ‘S’ curve? – S&T related? Can LTR override some other limitations on what foreigners can otherwise do?
- v) Start Ups needs an examination of what is missing
- vi) Digital Nomad/Digital Freelancer was in, but changed to ‘WFT’. Suggest a category for Freelancers based on proposed points system, based on Smart Visa

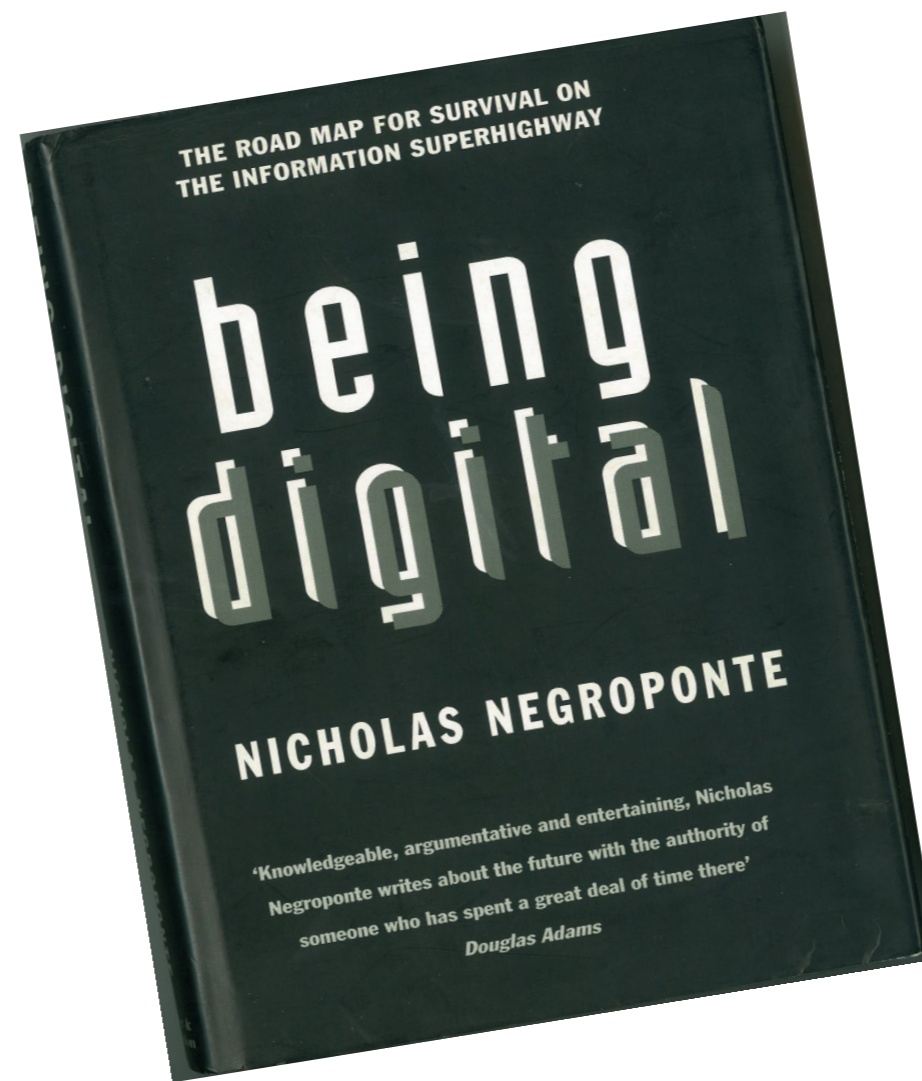


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3. Digital Transformation / Digital Government/ Digitalisation / Thailand 4.0



Being Digital

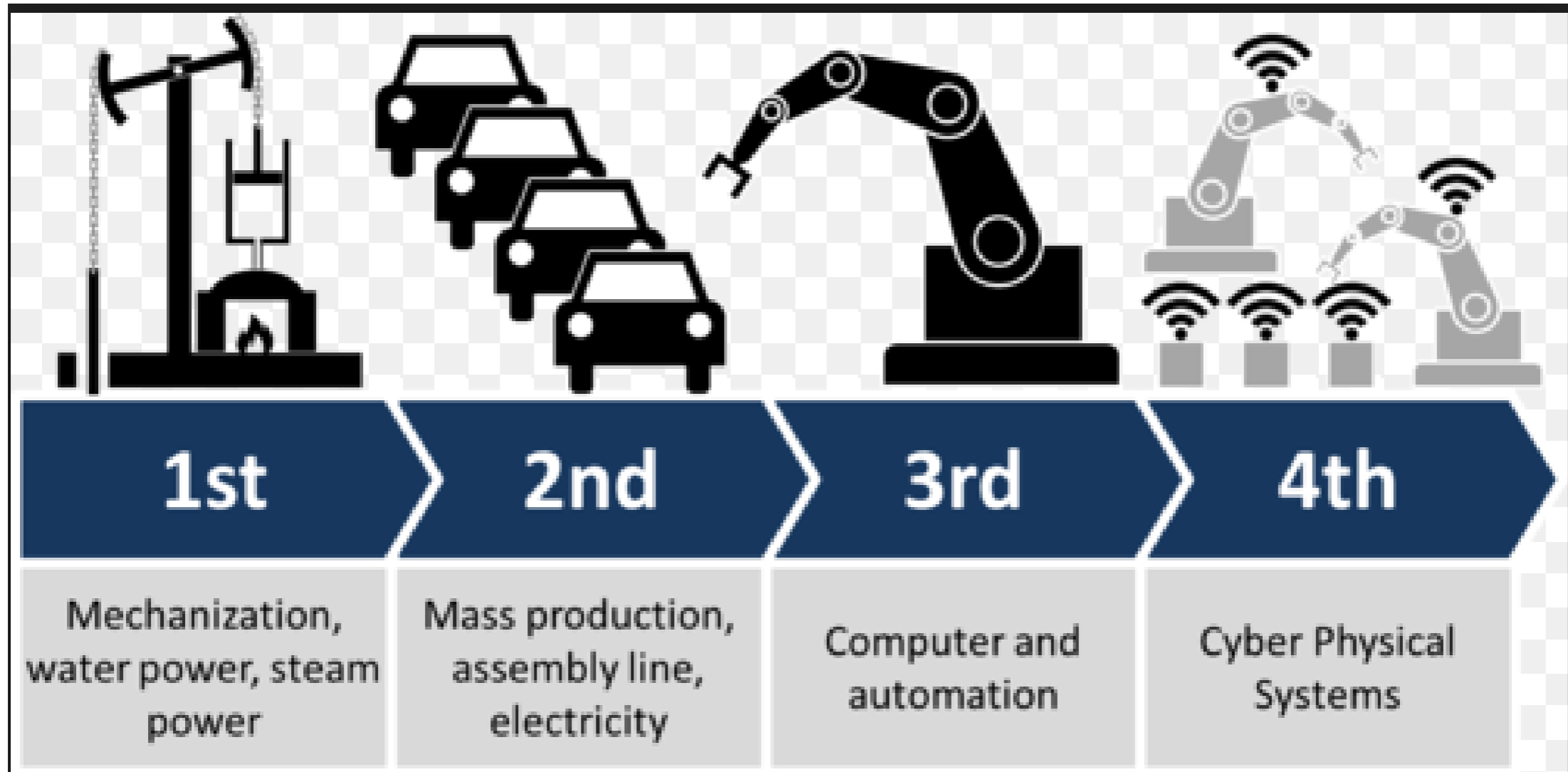


1995

- 'Digitalisation' – process re-engineering, full digital experience, remove unnecessary steps; interoperability amongst agencies and Single Sign On (SSO).
- 'Digitisation' – soft copy of hard copy –file the PDF. A useful improvement but not a step along the way to Digitalisation.

DEPA terminology - useful distinction

Thailand 4.0 4IR



Trend of automation and data exchange in manufacturing technologies. Includes cyber-physical systems, IoT; cloud computing, AI

Industry 4.0 implies higher skills in the economy, pervasive digital literacy, use of big data, analytical skills

Towards Digitalisation – Digital Government

A basket of approaches:

Positive vision A whole-of-government plan, inter-agency interoperability, single sign-on. Process re-engineering after removing unwanted, unnecessary regulation; time line for the plan

Digitally enabling laws – eg draft Electronic Performance of Administrative Functions.

BizPortal but more to do on eliminating some licences; possible Omnibus law?

Many Digital era laws – see next page. In most cases – compatible with international norms and similar laws.

Consultation – sometimes rushed – eg Digital Platforms Decree; sometimes non-existent eg Data Retention Notification update; sometimes thorough – eg PDPA and PDPA subsidiary regulation, Cybersecurity Act

APEC Good Regulatory Practices (GRP)

A request: Industry education and buy-in during consultation results in intellectual ownership of the law, much better for compliance.

Many Digital laws in pipeline or in place

Some overlap – public consultation appreciated, where it is done.

‘Service Provider’ is used in many, means different things.

- i) Draft Digital Platforms Governance Decree
- ii) Personal Data Protection Act – sub rules being developed, no PDPC yet but strong Interim Office,
- iii) Cybersecurity Act, in force and the NSCA (‘Office’) in place
- iv) eCommerce Tax in force 1 September with a Guideline issued July and many points still needing to be clarified; TRD has offered review
- v) Amendments to the Copyright Act - ISPs (Intermediary Service Providers), which include some of the DSP Operators contemplated by the Platforms Decree.
- vi) Computer Crimes Act also similarly provides safe harbor or exemptions for intermediaries 2017 and also governs many other on-line transactions.
- vii) Legislation governing payments.
- viii) Proposed changes to 2018 Trade Competition Guidelines under the Trade Competition Act - OTCC
- Direct Sales and Direct Marketing Act (DSDMA).
- i) Consumer Protection Act OCPB –
- ii) Proposed change to Electronic Transactions Act

What is working, what needs support and development

Positives

- i) Electronic meetings Decree
- ii) ETA but Digital Signatures need promotion
- iii) Electronic payments
- iv) Cybersecurity – challenge is how to be nimble and responsive
- v) Pathway towards PDPA
- vi) On line filing of taxes (but we suggest upgrade of back office support)

Development

- i) Generally digitalisation varies – some just digitisation in silos
- ii) Fake News – who is it protecting? – would protecting Truth in the Economy be a sound aim?
- iii) Interim rules pending PDPA are not well known, are they important?



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4. Human Resource Development



Reskilling for Economic Recovery

In some sectors, organisational learning and skills are gutted – eg hospitality. JFCCT has a ‘Reskilling for Economic Recovery’ proposal for hospitality

Investors expect skills in the economy – we now have to re-skill and upskill, match skills to demand. OECD report on Vocational Training in Thailand (July 2021) emphasise need for skills matching

Capacity Building – Reskilling – Digital arena example -



Build local education & training; infuse foreign skills

- 1) Revised IT education emphasis of soft skills (problem solving and project management); changes from early primary (to develop enquiring minds); learning English
- 2) IT Competency Framework and a holistic and strategic approach to skill gaps; identification of which specialist areas might be areas of special comparative advantage and excellence;
- 3) Avoiding Thai-specific certifications (unless it is about something which is uniquely Thai) but better adoption and recognition of global standards
- 4) Reform work permit and visa regulation; Smart Visa a start
- 5) Personal tax incentives.
- 6) Twinning arrangements or other collaborations with foreign leading institutions.. Specialist academic–industry collaboration (there are several good examples)
- 7) Support for private-sector in-house training but with a development path
- 8) Recognition of nation-wide programmes,
- 9) Vocational education addressing skills mismatch

Innovation

Purpose of IT innovation:

both radical & incremental business innovation:

at the workgroup level

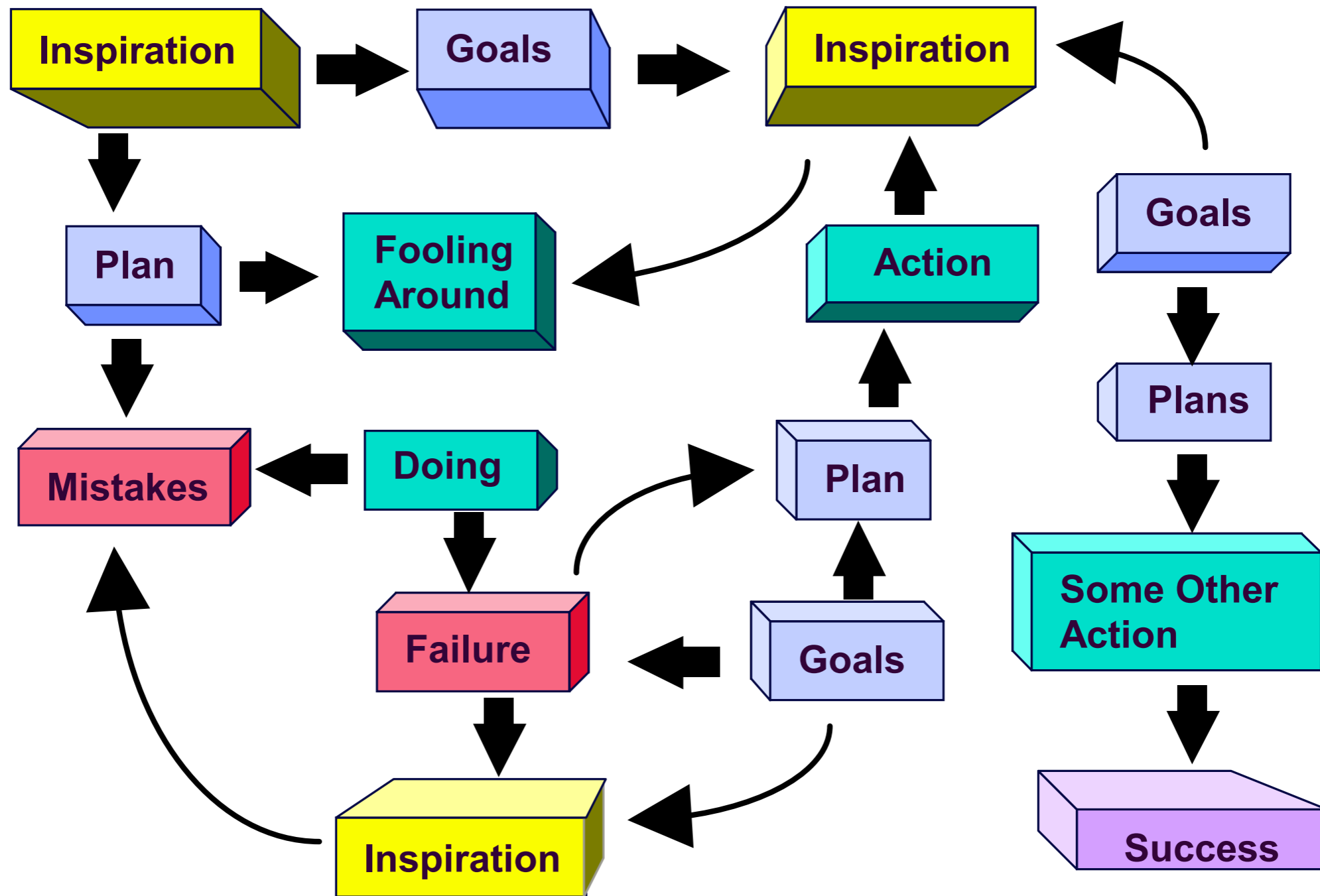
at line of business level

at the enterprise level

**and most crucially (for the 21st century) at the inter –
enterprise level**

**and to accelerate building talent & capability at all
levels**

How Innovation happens



Graphics source: Pinchot 2002

But how rigid are attraction policies?



5. Sustainability and BCG/ESG green Models

- Bio/Circular/Green**
- Environmental/Society/Governance**



BCG 1



Cabinet decision on Bio, Circular, Green Economic model (BCG) January 2021, focusing on upskill and improvement in the workforce and in technological innovation.

Framework to which the government should direct its investment and policy over the next six years, **Four Pathways**- see BOI TIR

(https://www.boi.go.th/un/thailand_investment_review/?language=en¤t_page=1).

- Enhance economic value of agricultural and food products, applying biotechnology to meet the needs of global consumers.
- Build technology and human capital in the research and development of technology in medical and pharmaceutical industries.
- Promote bioenergy, biomaterials and biochemicals, including renewable energy from waste, biomass and biogas as well as community based power plants; connected through blockchain-enabled microgrids.
- Link tourism to the country's intellectual capital to promote tourism in less visited cities.

BCG 2

13 Measures to drive BCG, including

- Big data
- Carbon credit market
- Upgrade premium agriculture
- Strengthen bio-based economy
- Promote green tourism
- Support BCG Start Ups
- Global talent

BOI incentives for private sector engagement

Other: CTA? Climate Trade Agreement?

Environmental/Social/ Governance **ESG**



A set of standards set for companies to align with the future of a sustainable economy.

Environmental criteria encourages a company to monitor and evaluate their energy use, carbon footprint, pollutants, natural resource conservation and the treatment of animals.

Social criteria covers the company's business relationships and values on employee, customer and community engagement, for example.

Governance, transparency in accounting methods and involvement of shareholders, avoiding conflict of interest with board members, maintaining legality are examples of the areas covered.

Analysts favour companies with ESG policies. Cost of capital can reduce.

Market practice moves towards ESG. Government policies to incentivise?



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Electric Vehicles EV including Battery EV, Fuel Cell EV



EV 1

Air Pollution

Thailand ranks 34th air pollution (global index)

PM 2.5 annual emission 2.5 x WHO standard

Road transport in Bangkok is the main contributor for PM2.5, CO₂ , Nox

EU Green Deal

- reducing net greenhouse gas emissions by at least 55% by 2030, compared to 1990 levels
- 2050 climate-neutral or net zero,

Thailand plans to reduce carbon to net zero within 2065 – 2070. See National target for ZEV

production and registration, aiming to become global production and export base

To achieve the targets, EV ecosystem has to be nationally developed

EV development under several Ministries

National EV Policy Commission announcement on May 12, 2021, ZEV to contribute at least 30% of total domestic vehicle production by 2030 (30/30 policy). BEV (battery) and FCEV (fuel cell)

Is there any plan to establish EV charging station in Bangkok and major cities?

How can EV charging be supported across the country? What are investment promotion proposal to domestic Battery manufacturers e.g. tax privileges?



JFCCT

THANK YOU

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