

The Brief

Magazine of the British Chamber of Commerce Thailand
Issue 2/2012



www.bccthai.com



Backing Britain

Outdated laws prove stumbling block to ASEAN integration

Tilleke & Gibbins Partner and close ASEAN watcher Cynthia Pornavalai gives her latest assessment of the ASEAN Economic Community.

The ASEAN Free Trade Area has made great strides in removing tariffs between member countries. When the ASEAN Economic Community (AEC) takes effect in 2015 it is expected that tariffs will be removed on all intra-ASEAN goods in line with the relevant agreements and protocols. In addition to these zero tariffs the AEC aims for the removal of non-tariff barriers and increased trade facilitation.

“The main focus as we edge closer to 2015 is the elimination in full of non-tariff barriers by enhancing transparency of non-tariff measures and formulating regional rules and regulations consistent with international best practices”, explains Cynthia Pornavalai, a Partner in the Corporate and Commercial group at leading south east Asia law firm and BCCT member Tilleke & Gibbins.

“The AEC aims to simplify, harmonise and standardise trade and customs processes, procedures and related information flows by establishing the essential trade facilitation cooperation mechanism and customs integration. The ultimate goal is the ASEAN Single Window (ASW).” But it’s not that easy. To create the ASW each individual member must first make operational its National Single Window.

The AEC envisages the complete removal of restrictions to the provision



of services and the establishment of companies across national borders with the ASEAN region by 2015 (subject to national regulations).

There are separate and very significant discussions taking place concurrently on issues relating to air transport and financial services. ASEAN also aims to establish mutual recognition arrangements for professional services provided by architects, accountants, dentists, surveyors and doctors.

The AEC is also striving to establish a free and open investment regime that enhances ASEAN’s competitiveness in attractive foreign direct investment and that also promotes intra-ASEAN investment. The goals include enhanced investment protection, facilitation and cooperation as well as progressive liberalisation of member countries’ investment regimes.

The AEC aims to strengthen ASEAN

capital market development and integration through the harmonisation of capital market standards in areas such as offering rules for debt securities and cross-border capital raising activities.

The free and unhindered movement of labour within the region is a major element in the work leading up to 2015. “The AEC is moving towards managed mobility or facilitated movement of natural persons by creating employment passes for ASEAN professionals and skilled labour,” adds Cynthia Pornavalai. “The aim by 2015 is to have a complete free flow of services and, to this end, ASEAN member countries are seeking harmonisation and standardisation by enhancing increased mobility of students and staff within the region.

“They also wish to develop core competencies and qualifications for occupational trainers’ skills and strength-

en the research capabilities of each ASEAN member country through the promoting of skills and job placements in the region.”

The AEC Blueprint, adopted in 2007, outlines the measures to be taken and the schedule of implementation. A scorecard mechanism monitors this schedule and, in 2010, the first results were made public. The results suggest that Thailand is off the pace in some respects.

The country has established its National Single Window, along with Brunei, Indonesia, Malaysia, Philippines and Singapore. Thailand has also ratified the ASEAN Trade in Goods Agreements (ATIGA), described by ASEAN Secretary General Dr Surin Pitsuwan as ‘a major achievement towards the establishment of a single market under the ASEAN Economic Community 2015’.

Thailand, along with Indonesia, has not yet ratified the ASEAN Comprehensive Investment Agreement. All



Cynthia Pornavalai

other member countries have ratified this important agreement.

Most ASEAN countries, including Thailand, no longer place restrictions on inward and outward foreign investments. However, work continues on the key issue of financial integration in capital market development, liberalisation of financial services, capital account liberalisation and ASEAN currency cooperation.

Thailand ratified the ASEAN Framework Agreement on Mutual Recognition Arrangement (MRA) some 10 years ago but has yet to endorse the specific MRAs relating to professional services such as accountancy and dentistry. Overcoming national legal obstacles is a major challenge when addressing bilateral or multi-lateral agreements.

“Thailand has always oscillated between protectionism and liberalisation. Recognising the importance of foreign investment for its economic growth, Thailand has relaxed relevant laws and regulations. At the same time, however, it has stubbornly held on to antiquated laws that restrict foreign participation in industries where Thai nationals are deemed to be uncompetitive,” says Cynthia Pornavalai.

“For Thailand to fulfil its commitments to various AEC agreements and protocols it must revamp the two major legal stumbling blocks, namely the Foreign Business Act and the Alien Employment Act.”





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