

Goodbye Kafka, hello clarity: licensing reform on the way

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In Franz Kafka's novel *The Castle*, the protagonist tries in vain to get in touch with a mysterious group of administrators who run a small village from a castle. The character is challenged to learn the constantly changing ways and customs of the castle's imposing bureaucracy.

Governments the world over employ vast armies of bureaucrats to administer official business, which includes everything from granting marriage licences to approving multibillion-dollar investment projects. Thailand is no exception. But a new law called the Licensing Facilitation Act is aimed at making the bureaucracy easier to navigate and help Thailand's business competitiveness.

As its name implies, the Act seeks to make it easier for businesses and individuals to obtain official licences and approvals from government agencies. To that end, it promotes two overarching principles: greater transparency and less administrative discretion.

Indeed, as with the bureaucracies of other countries, the licensing process within Thai government agencies is often opaque. The time required to obtain a licence is also uncertain, and officials can seem arbitrarily to change their minds about what paperwork is needed.

All of this makes doing business more difficult — and increases opportunities for corruption, as exasperated applicants will do whatever it takes to get their licence.

The Licensing Facilitation Act, which goes into effect on July 21, takes aim at these problems. It requires licensing authorities to prepare a "licensing manual". The manual must contain all the rules, procedures and conditions to obtain a licence as well as when the licence must be issued.

If a licence application is complete according to the manual, an official cannot ask for more documents. In other words, the manual should bring welcome predictability to the licence application process.

What is more, licence applications can be submitted electronically instead of by paper if allowed by the manual. This can save applicants significant time and expense.

If the application has a defect or does not fulfil the requirements stated in the manual, the official must ask the applicant to remedy the application immediately. If this is not possible, the official must make a record of the defect and the period of time needed to fix it.

Importantly, the official must make a decision on the licence as per the timeline in the manual. If the deadline is not complied with, the official must explain the delay to the applicant and the Public Sector Development Commission, a government body under the Prime Minister's Office, every seven days until a decision is made.

If the official fails to explain the delay, he or she can be liable for damages. The law does not state how damages would be calculated or to whom the official would be liable.

Another key feature of the Act is the creation of a One Stop Service Centre. The cabinet has the authority to establish such a centre to receive all applications under the laws related to licensing. The One Stop Service Centre would be its own government agency, with branch offices under different ministries and different provinces.

The One Stop Service Centre would accept applications, inform applicants of licensing rules, send applications to the relevant agency and give recommendations to the cabinet on improving licensing rules and application requirements. It can greatly ease the burden on applicants, as people would not be required to visit various agencies to obtain multiple licences needed for an investment project.

The Licensing Facilitation Act also contains oversight mechanisms — for example, if a licensing official does not grant a licence due to dishonesty or negligence, the relevant authority can bring disciplinary action against that official. Further, the Public Sector Development Commission can inspect whether the licensing officials' work flow and period of time for granting the licence stated in the manual are compliant with "good governance" rules. These rules are not specifically defined in the Act.

Additionally, licensing authorities must review the laws that empower them to grant licences every five years. The authorities must submit reports of their review to the cabinet for consideration.

The Licensing Facilitation Act applies to almost all government licensing procedures, with a few notable exceptions. Courts are exempt, as are natural resource and environmentally related licensing. Military licences are also generally exempt from the law.

The Act has the potential to make obtaining official licences and approvals much easier. And reducing officials' discretion in the licensing process will help to stop opportunities for corruption. Successful implementation would not only enhance Thailand's investment environment but also improve overall governance. A more transparent and less Kafkaesque bureaucracy would be a boon for Thailand.