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Logistics Services in Thailand under the AEC

Italian-Thai Development Plc, a leading Thai construction company, has been making headlines in the region due to its major investment in building the Dawei Deep-Sea Port and Infrastructure Project in Myanmar. Located roughly 300 kilometers from the Thai border, this USD 8.6 billion project will open the gate for import and export of goods from countries to the east of Thailand, like Cambodia, and those to the north, like Laos and China, through Thailand to Myanmar via Kanchanaburi province.

This new shipping route—and other major projects that will move forward under the ASEAN Economic Community—will depend on a thriving regional logistics industry. To help drive this growth, Thailand is now moving to strengthen its local logistics operators and amend the legislative framework to allow for greater foreign investment in the sector as the AEC approaches.

Increasing Regional Competition

In Thailand, domestic transportation and other services businesses are among the activities restricted by the Foreign Business Act B.E. 2542 (1999) (FBA), under which foreign shareholding cannot exceed 49% of the total shareholding in an entity. The logistics industry is one of the services in which equity participation in ASEAN countries is set to change under the AEC. The AEC Blueprint currently allows equity participation of 51%, which will increase to 70% by 2013.

Given the variety of logistics services—ranging from maritime cargo handling services to warehousing to customs clearance and more—the development of competitive logistics businesses in Thailand will require not only financial capability, but also technological know-how. As other ASEAN member states increase their equity participation in Thai businesses to up to 70%, local players will need to develop their capacity in order to compete effectively.

Developing Local Capacity

The Office of the National Economic and Social Development Board is aware of the need to develop the local industry. To take action, it has divided Thailand's logistics sector into a business framework across five types of activities: (1) cargo transportation inside and outside the country, by road, rail, sea, or air; (2) cargo storage, warehousing, packaging, and cargo distribution; (3) customs formalities; (4) other auxiliary logistics works; and (5) postal and parcel services.

According to company registration statistics, more than 70% of Thai logistics businesses involved in these activities are small and medium enterprises (SMEs) with less than THB 5 million capital. For these operators to compete with global firms, the government agencies involved in these activities will open a dialogue with the private sector in order to form a master plan to implement laws and regulations or procedures.

To develop local logistic businesses, several weaknesses need to be remedied. These weaknesses include lack of basic

data and technical information, lack of capital investment, lack of manpower in the field, and inefficient connection among transportation modes. The Thai government has laid out plans to remedy these weaknesses, one of which is to draft new legislation to promote and develop the Thai logistics industry. This legislation has not yet been enacted, but the provisions of the draft bill express methods to tackle the key issues.

Possible Legislative Changes

Under the draft bill, the definition of “Thai logistic business” is a company not less than 50% owned by Thai individuals with the majority of its directors Thai nationals. Once the law is enacted, a special committee will be set up with the duty to set policies suitable for logistics business operators, improve laws and regulations to enhance efficiency, etc.

Privileges will also be granted such as exempting or reducing corporate income tax or value added tax, and allowing shippers of goods from Thailand to other countries a deduction of 50% of the service provided by promoted logistics business operators from net income. Also under the bill, government agencies and state enterprises will be encouraged to use services from promoted logistics operators; training for personnel in administration, marketing, and technology will be developed; logistics businesses will be expanded outside Thailand; and new rules and procedures will be implemented.

Other local laws relating to the logistics industry, such as the Thai Vessels Act, Air Navigation Act, Land Transportation Act, Automobile Act, State Railway of Thailand Act, Multimodal Transport Act, and Merchant Marine Promotion Act, also need to be taken into consideration. In this respect, it is essential for the Thai government to consider whether these laws will require amendment, so that local logistics operators will be able to compete with investors from other ASEAN member states.

Due to Thailand's location in the center of the ASEAN region, with a long coastal area, deep-sea ports, and modern infrastructure, the Thai government is aware of the necessity to set up a government agency to assist local logistics business operators, such as by providing information of logistics business operators of other ASEAN countries and updating laws and regulations affecting the logistics sector.

Implications for Foreign Business Act

These actions intended to develop local capacity are likely to provide a good first step toward strengthening Thailand's logistics industry. At the same time, it will be interesting to monitor the next steps of the Ministry of Commerce, which is the government organization responsible for company registration and Foreign Business Act compliance.

As discussed above, the AEC Blueprint allows for 70% equity participation, whereas the FBA restricts foreign shareholding. Logistics businesses cover domestic land, waterway, and air transport, which is classified under List 2 of the FBA, and other services such as packaging, which is classified under List 3 of the FBA. Each list provides certain restrictions on equity participation by foreigners.

With the new equity participation percentage under the AEC Blueprint, it is likely that, in practice, the officials of the Department of Business Development at the Ministry of Commerce may rely on exceptions available under the FBA for granting licenses to ASEAN investors to operate logistics business in Thailand. This would allow them to adhere to the AEC Blueprint without the need to amend current, or implement new, legislation. ⚖️