



# FURTHERING BUSINESS ENVIRONMENT REFORMS IN THAILAND

## Trade Facilitation

### Final Report

March 2023



**WORLD BANK GROUP**

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## Acronyms and Abbreviations

Acronym	Description
<b>ACDD</b>	ASEAN Customs Declaration Document
<b>API</b>	Application Programming Interface
<b>ASEAN</b>	Association of South East Asian Nations
<b>ATIGA</b>	ASEAN Trade in Goods Agreement
<b>B2B</b>	Business-to-Business
<b>B2G</b>	Business to Government
<b>BPA</b>	Business Process Analysis
<b>BPR</b>	Business Process Re-engineering
<b>CLPA</b>	Certificates, Licenses, Permits, Authorizations
<b>CMS</b>	Customs Management System
<b>DOF</b>	Department of Fisheries
<b>ETA</b>	Electronic Transactions Act
<b>FDA</b>	Food and Drug Administration
<b>GA</b>	Government Agency
<b>GATT</b>	General Agreement on Trade and Tariffs
<b>GOT</b>	Government of Thailand
<b>NSWSC</b>	NSW Steering Committee
<b>NTFC</b>	National Trade Facilitation Committee
<b>OPDC</b>	Office of Public Sector Development Commission
<b>PPP</b>	Private Public Partnership
<b>RAS</b>	Reimbursable Advisory Services
<b>SEF</b>	Single Entry Form
<b>SLA</b>	Service Level Agreement
<b>TFA</b>	WTO's Trade Facilitation Agreement

<b>Acronym</b>	<b>Description</b>
<b>THB</b>	Thai Bhatt
<b>TIP</b>	Trade Information Portal
<b>TNSW</b>	Thai National Single Window
<b>TNTR</b>	Thai National Trade Repository
<b>UN/CEFACT</b>	United Nations Centre for Trade Facilitation and Electronic Business
<b>UNCITRAL</b>	United Nations Commission on International Trade Law
<b>WBG</b>	World Bank Group
<b>WCO</b>	World Customs Organization
<b>WMS</b>	Workflow Management System
<b>WTO</b>	World Trade Organization
<b>XML</b>	Extensible Mark-up Language



## Executive Summary

At the request of the Government of Thailand, the World Bank Group has undertaken to deliver advisory recommendations under a RAS<sup>1</sup> Agreement between the World Bank Group and the Office of Public Sector Development. One of the components of the advisory services required undertaking a gap analysis on the degree of automation for the full and effective implementation of the Thai National Single Window.

A World Bank Group team (“the Mission”), comprising international and national consultants and with remote support from the World Bank Group’s Head Office, undertook a number of missions in order to meet with relevant stakeholders and collect the information necessary to formulate conclusions and make recommendations. The Mission’s findings and recommendations are to be found in this report.

The implementation of a Single Window is a commitment under the World Trade Organization’s Trade Facilitation Agreement. Single Window was notified to the World Trade Organization by Thailand, in July 2015, as a ‘Category A’ meaning that a Single Window was already fully implemented at the time, and it would be functional by the date the agreement came into force (February 2017).

The objective of the Mission was to carry out a gap analysis for the Thai National Single Window implementation and an evaluation of its program in order to:

- a) establish whether the Thai National Single Window has the necessary attributes to fulfil the Trade Facilitation Agreement’s requirements for a single window which conforms to international standards of good practice;
- b) ascertain whether any issues or problems exist which would constitute an impediment to deriving the full benefits intended; and
- c) make recommendations as to what actions should be taken to attain the objective of a full and effective implementation of the Single Window.

The Mission’s evaluation and findings were guided by the good practice benchmark for what constitutes a Single Window set by the World Trade Organization and other international standards organizations, in particular UN/CEFACT’s Recommendation No. 33<sup>2</sup>, 35 and others which are universally recognized as the *de-facto* standard of good practice for the implementation of a national Single Window.

These standards are also aligned with ASEAN’s<sup>3</sup> prescribed standards for the national single windows which member states are expected to implement as a means of creating the intra-national ASEAN Single Window.

To meet the key requirements prescribed by these international benchmarks, a national Single Window must include the participation of all parties involved in trade and transport, provide a single point for electronic “*single submission*” of trade data elements, be founded on a solid legal framework and must use internationally recognized standards for data and document exchange between parties.

In addition, pragmatically, any assessment of a Single Window should determine whether it is substantially seen to be cost-effective and beneficial by its intended users in terms of fulfilling its objective of trade facilitation, both nationally and internationally.

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<sup>1</sup> RAS: Reimbursable Advisory Services

<sup>2</sup> UN/CEFACT: United Nations Centre for Trade Facilitation and Electronic Business

<sup>3</sup> ASEAN: Association of South East Asian Nations

## Findings

### **Key Success Factors**

The Thai National Single Window program can be said to have many positive aspects and compares favourably with experience in other countries, including more advanced economies.

The Thai National Single Window has delivered a number of positive outcomes, especially, having virtually eliminated all paperwork in import/export processes and having achieved automation and interconnectivity in the majority of agencies that perform a regulatory function in relation to border clearance.

### **Legislation**

The Thai National Single Window is based on an adequate enabling legislative framework which, not only allows its current mode of operation, but also provides a reasonable foundation for potential future expansion and enhancements. However, the Government should from time to time review the legislation in light of future developments or initiatives, such as the Government's role in the National Digital Trade Platform or full implementation of the ASEAN Single Window, to ensure that the legislation duly supports the strategic initiatives. A full review of the legislative framework can be found in the separate report *Legal Framework of the Thai National Single Window* which is also included in this report as an Appendix.

### **Governance Structure**

The governance structure in place is appropriately layered and it provides a direct chain of accountability to the highest level of government. However, the lack of an overarching National Single Window law leads to lack of transparency or overlaps in certain areas as the roles and responsibilities of the parties are not clearly defined in law. For this reason, the Mission recommends that the Government should consider enacting such a law. Many suitable models exist as they have been adopted by many countries around the World.

## Drawbacks

However, whilst recognizing the substantial achievements of the Thai National Single Window and the pragmatism of its approach, some drawbacks in its current operation were identified.

### **Functional Model of Single Window**

Firstly, the Thai National Single Window cannot be said to be aligned with the "single submission" model predicated by international standards organizations and considered to be the general model of good practice. This is not necessarily a problem if, like in the case of the Thai National Single Window, the Single Window is seen to be efficient and cost effective. Nonetheless, the ease, speed and cost of operation could still be substantially reduced if duplication of inputs across different Government agencies and Customs was replaced with a "single submission" model.

### **Lack of Automation**

Some Government agencies still do not use an automated back-office system and this also leads to some transactions requiring a long time in the back-office cycle to process.

### **Continued Use of Paper Documents**

There are still some agencies that require paper documents and cite the law as a reason, whereas, in the Mission's opinion, especially following the coming into force of the E-Performance Act 2022, there are no impediments in the current legislation that stop them accepting electronic documents.

### **Role of Service Providers**

The concept of operation of the TNSW has been complicated by the recent decision to appoint National Telecom as the sole operator. This has caused a conflict with the long established role of the Value Added Service providers and lack of transparency in terms of the fee charging. A fundamental issue is the fact that aspects of the licensing agreement between Customs, who has overall regulatory responsibility for the Thai

National Single Window, and National Telecom, the operator, are still being re-evaluated and discussed by the two parties, after over two years of being in place. The Mission was given to understand that, as a result, there are no Service Level Agreements<sup>4</sup> in place that clearly state to the users (both private and public) what they can expect in terms of performance, service, security, privacy, etc. or, indeed, what the remedies would be for any failures or breaches.

## **Recommendations**

### **Technical and Functional Architecture**

Even though the concept of operation and the technical architecture of the Thai National Single Window do not conform to the good practice “single submission” model predicated by UN/CEFACT, the World Trade Organization, the World Customs Organization and, indeed, ASEAN, the Mission Team does not necessarily recommend that it should be changed substantially as it has been proved to work well and deliver benefits to trade and to agencies. However, a model based on ‘single submission’ (which could be achieved in different ways that do not necessarily require starting again from scratch) would deliver significant benefits, not only for traders who would welcome the absence of duplication when applying for licences, permits, etc. but also for Customs and other Government agencies who would be able to leverage the Single Window to collaborate in real time over initiatives such as risk management, trader relationship management, post clearance audits, compliance management, joint border management, etc. This would, not only simplify operations, but also lead to increased compliance and revenues.

The Mission recommends that a technical working group or committee is formed to discuss potential business process and consequential technical architecture upgrades of the Thai National Single Window, such group comprising representatives from all the stakeholders. The output of the discussions should be a strategy document which will inform subsequent business process re-engineering and technical development.

### **Operational and Financial Model**

In terms of the operational and financial model, The Government should make a clear decision as to whether the Thai National Single Window, should be publicly or privately operated and funded (or a combination of both) and identify the fairest model to implement either decision with clear roles defined for all service providers. The Government could benefit from adopting methodologies used in other countries as a model for evaluating all the pros and cons of different operational and financial models and apply the lessons learned by tailoring them for the Thai environment.

The Mission recommends that, before any further contractual arrangements are finalized, an open dialogue takes place among the stakeholders to discuss pros and cons of various operational and financial arrangements, as the ultimate decision must be one which is seen by all parties concerned as being fair and sustainable, as well as aligned with international and national law.

### **Legislation**

Although the findings suggest that the TNSW is based on a solid legislative basis, the Mission recommends that the GOT should consider the benefits of introducing a specific “TNSW Law”. Most NSW legislation

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<sup>4</sup> Service Level Agreement (SLA) are supplementary contracts that extend the terms of service to the users including guarantees of performance and provisions for remedies in case of default.

internationally is based on the key principles laid out in UN/CEFACT's Recommendation No. 35<sup>5</sup>. However, these need to be blended appropriately into existing national legislation.

The WBG has assisted a number of countries with drafting National Single Window legislation taking into account all local circumstances and would be pleased to share examples or assist the GOT with developing appropriate legislation.

### **Conclusion**

The above and other recommendations may be found at *Section 14 below*.

A summary of recommendations can also be found at *Section 14.7 below*.

This report also includes outlines of potential new models of operation which could be implemented should the GOT decide to pursue a functional model more in line with international standards. These are included in the separate reports *Business Process Analysis and Business Process Re-engineering* and *Risk Management and Border Agency Collaboration*, which are also attached as Appendices to this report.

The World Bank Group is pleased to submit this report to the Office of Public Sector Development for consideration.

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<sup>5</sup> [https://unece.org/fileadmin/DAM/trade/Publications/ECE-TRADE-401E\\_Rec35.pdf](https://unece.org/fileadmin/DAM/trade/Publications/ECE-TRADE-401E_Rec35.pdf)

## บทสรุปผู้บริหาร

กลุ่มธนาคารโลกได้ดำเนินการจัดทำข้อเสนอแนะภายใต้ข้อตกลง RAS<sup>6</sup> ระหว่างกลุ่มธนาคารโลกกับสำนักงานคณะกรรมการพัฒนาระบบราชการ (ก.พ.ร.) โดยหนึ่งในองค์ประกอบของการศึกษาค้นคว้าครั้งนี้ คือ การวิเคราะห์ช่องว่างในการพัฒนาระบบอัตโนมัติสำหรับการใช้งานในระบบ National Single Window ของไทยอย่างเต็มรูปแบบและมีประสิทธิภาพ

ทีมงานของกลุ่มธนาคารโลกที่ดำเนินการใน “ภารกิจ” นี้ ประกอบด้วย ทีมที่ปรึกษาทั้งชาวไทยและชาวต่างชาติ รวมถึงได้รับการสนับสนุนทางไกลจากผู้เชี่ยวชาญที่ประจำอยู่ ณ สำนักงานใหญ่ของกลุ่มธนาคารโลกด้วย โดยทีมงานได้มีการเข้าพบเพื่อหารือกับผู้มีส่วนได้ส่วนเสีย เก็บรวบรวมข้อมูลที่เป็นในการจัดทำสรุปข้อค้นพบและข้อเสนอแนะ

การดำเนินการ Single Window นั้น เป็นข้อผูกมัดภายใต้ข้อตกลงการอำนวยความสะดวกทางการค้าที่ประเทศไทยได้แจ้งกับองค์การการค้าโลก (World Trade Organization – WTO) ไว้เมื่อเดือนกรกฎาคม พ.ศ. 2558 โดยการดำเนินการของไทยจัดอยู่ใน ‘ประเภท A’ หมายความว่า มีการดำเนินการ Single Window ได้อย่างสมบูรณ์แล้ว และจะมีการใช้งานภายในวันที่ข้อตกลงมีผลใช้บังคับ (กุมภาพันธ์ พ.ศ. 2560)

วัตถุประสงค์ของการศึกษานี้ คือ เพื่อวิเคราะห์ช่องว่างในการดำเนินการ National Single Window ของประเทศไทยและทำการประเมินเพื่อ:

- ก. ระบุว่า National Single Window ของไทย มีคุณสมบัติที่จำเป็นเพียงพอต่อการปฏิบัติตามข้อกำหนดของข้อตกลงการอำนวยความสะดวกทางการค้าสำหรับ Single Window ตามแนวปฏิบัติที่ดีของมาตรฐานสากลหรือไม่
- ข. ตรวจสอบว่ามีประเด็นหรือปัญหาที่จะเป็นอุปสรรคต่อการได้รับประโยชน์จาก National Single Window อย่างเต็มที่หรือไม่ และ
- ค. ให้ข้อเสนอแนะว่าควรดำเนินการอย่างไรเพื่อให้สามารถบรรลุวัตถุประสงค์ในการใช้งาน Single Window ได้อย่างสมบูรณ์และมีประสิทธิภาพ

การประเมินและข้อค้นพบของการศึกษานี้ ได้ยึดหลักเกณฑ์มาตรฐานการปฏิบัติที่ดีในการดำเนินการ Single Window ที่กำหนดโดยองค์การการค้าโลกและองค์กรมาตรฐานสากลอื่น ๆ โดยเฉพาะอย่างยิ่ง ข้อเสนอแนะของ UN/CEFACT<sup>7</sup> ฉบับที่ 33 ฉบับที่ 35 และอื่น ๆ ซึ่งเป็นที่ยอมรับในระดับสากลว่าเป็นมาตรฐานในทางปฏิบัติ (de -facto) ที่ดีสำหรับการดำเนินการ National Single Window มาเป็นแนวทางในการจัดทำข้อเสนอแนะ

มาตรฐานเหล่านี้ยังสอดคล้องกับมาตรฐาน National Single Window ของอาเซียน ซึ่งประเทศสมาชิกคาดว่าจะนำไปปฏิบัติเพื่อสร้าง ASEAN Single Window ต่อไป

ดังนั้น เพื่อให้เป็นไปตามข้อกำหนดตามเกณฑ์มาตรฐานระหว่างประเทศเหล่านี้ National Single Window จะต้องประกอบด้วย การมีส่วนร่วมของทุกฝ่ายที่เกี่ยวข้องในกระบวนการทางการค้าและการขนส่ง มีจุดบริการ "การยื่นแบบครั้งเดียว (single

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<sup>6</sup> RAS: Reimbursable Advisory Services

<sup>7</sup> UN/CEFACT: United Nations Centre for Trade Facilitation and Electronic Business

submission)" แบบอิเล็กทรอนิกส์ในระบบข้อมูลทางการค้าเพียงที่เดียว มีกรอบกฎหมายที่ชัดเจนอ้างอิงได้ และต้องใช้มาตรฐานที่เป็นที่ยอมรับในระดับสากลในการแลกเปลี่ยนข้อมูลและเอกสารระหว่างคู่สัญญา

นอกจากนี้ ในทางปฏิบัติแล้ว การประเมิน Single Window ควรพิจารณาว่ากลุ่มผู้ใช้งานเป้าหมายเห็นว่า National Single Window นั้น มีความคุ้มค่าและเป็นประโยชน์ในการบรรลุดูประสงค์การอำนวยความสะดวกทางการค้าทั้งในระดับประเทศ และระดับนานาชาติหรือไม่

## ข้อค้นพบ

### ปัจจัยแห่งความสำเร็จที่สำคัญ

National Single Window ของไทย มีจุดเด่นหลายประการและเมื่อเปรียบเทียบกับประสบการณ์ National Single Window ในประเทศอื่น ๆ นั้น ไทยยังดีกว่าอีกหลายประเทศ แม้แต่ประเทศที่มีเศรษฐกิจก้าวหน้ากว่าไทยด้วย

โดยจุดเด่นของระบบ National Single Window ของไทย ได้แก่ การยกเลิกการใช้สำเนาเอกสารสิ่งพิมพ์ทั้งหมดในกระบวนการนำเข้า/ส่งออก และความสำเร็จในการใช้ระบบอัตโนมัติและการเชื่อมต่อระหว่างหน่วยงานภาครัฐส่วนใหญ่ที่ทำหน้าที่กำกับดูแลการส่งสินค้าผ่านแดน

### กฎหมายและระเบียบ

National Single Window ของไทย มีกรอบกฎหมายที่เอื้ออำนวยอย่างเหมาะสมรองรับ ซึ่งไม่เพียงแต่จะช่วยในการดำเนินการในปัจจุบันเท่านั้น แต่ยังสามารถเป็นรากฐานสำหรับการขยายขอบเขตและพัฒนาการดำเนินการ National Single Window ที่อาจเกิดขึ้นในอนาคตอีกด้วย อย่างไรก็ตาม ในอนาคตรัฐบาลควรมีการทบทวนกฎหมายและระเบียบเพื่อการพัฒนาหรือส่งเสริมความคิดริเริ่มใหม่ ๆ เช่น บทบาทของรัฐบาลใน National Digital Trade Platform หรือการดำเนินการ ASEAN Single Window อย่างสมบูรณ์ เพื่อให้แน่ใจว่ากฎหมายและระเบียบที่มีอยู่สามารถสนับสนุนความคิดริเริ่มเชิงกลยุทธ์ได้อย่างเหมาะสม ทั้งนี้ การทบทวนกรอบกฎหมายและระเบียบฉบับสมบูรณ์จะอยู่ในรายงาน "The Recommendations that Analyzes the Current Legislative Framework and identifies Legislative Changes required to Support Specific Features of the New Functional Model for the Thai NSW"

### โครงสร้างการกำกับดูแล

โครงสร้างการกำกับดูแลของรัฐที่มีอยู่มีการจัดแบ่งลำดับชั้นอย่างเหมาะสมและมีลำดับความรับผิดชอบโดยตรงถึงรัฐบาลในระดับสูงสุด อย่างไรก็ตาม การที่ประเทศไทยยังไม่มีกฎหมายที่ครอบคลุมภาพรวมของ National Single Window ทำให้ขาดความโปร่งใสหรือเกิดการทับซ้อนในบางส่วนของบทบาท อำนาจหน้าที่ ความรับผิดชอบ เนื่องจากกฎหมายไม่ได้กำหนดไว้อย่างชัดเจน ด้วยเหตุนี้ ทีมธนาคารโลกจึงเสนอแนะว่ารัฐบาลควรพิจารณาบัญญัติกฎหมายดังกล่าว ทั้งนี้ มีหลากหลายรูปแบบที่เหมาะสมกับประเทศไทยเนื่องจากได้มีการนำไปใช้ในหลายประเทศทั่วโลกแล้ว

## จุดอ่อน

อย่างไรก็ตาม แม้ว่า National Single Window ของไทยจะถือได้ว่าประสบความสำเร็จในหลายประการและมีแนวปฏิบัติที่สามารถดำเนินการได้จริงแล้วก็ตาม แต่ที่ทีมงานธนาคารโลกก็ได้ศึกษาพบจุดอ่อนบางประการในกระบวนการดำเนินงานปัจจุบัน ดังนี้

### รูปแบบการทำงานของ Single Window

National Single Window ของประเทศไทยยังไม่สอดคล้องกับรูปแบบ "การยื่นแบบครั้งเดียว (single submission)" ที่กำหนดโดยองค์กรมาตรฐานสากลและถือว่าเป็นรูปแบบทั่วไปของแนวปฏิบัติที่ดี แม้ว่าประเด็นนี้อาจไม่เป็นปัญหา หากเห็นว่าระบบ

National Single Window ของไทยมีประสิทธิภาพและมีความคุ้มค่าเพียงพอแล้ว อย่างไรก็ตาม รูปแบบการทำงานแบบ "การยื่นแบบครั้งเดียว (single submission)" จะช่วยให้เกิดความสะดวก ความเร็ว ลดค่าใช้จ่ายในการดำเนินการลงได้อย่างมาก และลดการป้อนข้อมูลที่ซ้ำซ้อนระหว่างหน่วยงานต่าง ๆ ของรัฐ

### ระบบอัตโนมัติ

หน่วยงานของรัฐบางแห่งยังไม่มีระบบ back-office ที่ทำงานโดยอัตโนมัติ ทำให้บางธุรกรรมใช้เวลานานในกระบวนการดำเนินงาน back-office ของหน่วยงานนั้น ๆ

### การใช้เอกสารกระดาษ

หน่วยงานภาครัฐบางหน่วยยังคงระบุให้ผู้มาติดต่อต้องใช้เอกสารกระดาษเนื่องจากข้อกำหนดทางกฎหมาย แต่ที่มงานธนาคารโลกเห็นว่า หลังจากที่พระราชบัญญัติการปฏิบัติราชการทางอิเล็กทรอนิกส์ พ.ศ. 2565 มีผลบังคับใช้แล้ว หน่วยงานภาครัฐทุกหน่วยจะสามารถยอมรับเอกสารอิเล็กทรอนิกส์ได้ทั้งหมดโดยไม่ติดเงื่อนไขทางกฎหมายอีกต่อไป

### บทบาทของผู้ให้บริการ (Service Providers)

แนวคิดการดำเนินงานของ National Single Window ของประเทศไทยนั้น มีความซับซ้อนจากการตัดสินใจแต่งตั้งบริษัท โทรคมนาคมแห่งชาติ จำกัด (มหาชน) เป็นผู้ดำเนินการแต่เพียงผู้เดียว ทำให้เกิดความขัดแย้งกับบทบาทของผู้ให้บริการเสริม (Value Added Service providers) ที่มีมาอย่างยาวนานและขาดความชัดเจนในการเรียกเก็บค่าธรรมเนียม ประเด็นสำคัญเกี่ยวกับสัญญาอนุญาตให้ใช้สิทธิ (Licensing Agreement) ระหว่างกรมศุลกากร ซึ่งมีหน้าที่กำกับดูแล National Single Window ของไทย กับบริษัท โทรคมนาคมแห่งชาติ จำกัด (มหาชน) ซึ่งเป็นผู้ดำเนินการ โดยยังอยู่ระหว่างการหารือแม้จะผ่านมาสองปีแล้วหลังจากที่มีการแต่งตั้งบริษัท โทรคมนาคมแห่งชาติ จำกัด (มหาชน) ดังกล่าว ด้วยเหตุนี้ ที่มงานธนาคารโลกจึงเข้าใจว่ายังไม่มีความชัดเจนระดับบริการ (Service Level Agreement - SLA)<sup>8</sup> ที่ระบุอย่างชัดเจนกับผู้ให้บริการ (ทั้งภาคเอกชนและภาครัฐ) ว่าจะสามารถคาดหวังประสิทธิภาพ บริการ ความปลอดภัย ความเป็นส่วนตัว ฯลฯ หรือมาตรการเยียวยาและแก้ไขข้อผิดพลาดหรือการละเมิดสัญญาใด ๆ ได้อย่างไรบ้าง

### สรุปข้อเสนอแนะเชิงนโยบาย

ประเด็น	ข้อเสนอแนะเชิงนโยบาย	ระยะเวลา
โมเดลของระบบ NSW ของไทยยังไม่ตรงกับมาตรฐานสากลที่แนะนำ โดยเฉพาะในเรื่องข้อกำหนดให้มีการยื่นเอกสารเพียงครั้งเดียว (single submission) หรือให้มีจุดเชื่อมต่อหลักเพียงแห่งเดียว (single entry point)	ให้จัดตั้งคณะทำงานด้านเทคนิคหรือคณะกรรมการที่ประกอบไปด้วยผู้มีส่วนเกี่ยวข้องทุกฝ่ายขึ้นมาเพื่อหารือแนวทางการดำเนินธุรกิจที่เป็นไปได้ รวมไปถึงการปรับปรุงทางด้านสถาปัตยกรรมของตัวระบบที่จะตามมา	<b>ระยะสั้น-กลาง:</b> ใช้เวลาประมาณ 6 เดือนสำหรับการหารือเรื่องยุทธศาสตร์ และ 6 เดือนสำหรับการกำหนดรายละเอียดของตัวระบบ และอีก 1-2 ปีสำหรับการสร้างระบบและนำไปใช้จริง

<sup>8</sup> ข้อตกลงระดับบริการ Service Level Agreement (SLA) เป็นสัญญาเพิ่มเติมที่ขยายข้อกำหนดในการให้บริการแก่ผู้ใช้ รวมถึงการรับประกันประสิทธิภาพและข้อกำหนดสำหรับการเยียวยาในกรณีที่ผิดสัญญา

ประเด็น	ข้อเสนอแนะเชิงนโยบาย	ระยะเวลา
หน่วยงานภาครัฐบางแห่งยังไม่มีมาตรการจัดการความเสี่ยง และยังขาดความร่วมมือในการบริหารจัดการบริเวณพื้นที่ชายแดนกับประเทศใกล้เคียง	รายละเอียดมาตรการจัดการความเสี่ยงสามารถดูเพิ่มเติมได้ในบท ' <i>Risk Management and Border Agency Collaboration</i> '	<b>ระยะยาว:</b> ใช้เวลาประมาณ 1-2 ปีหลังจากที่แพลตฟอร์มข้อมูลพัฒนาจนแล้วเสร็จและใช้งานได้
กรมศุลกากรทำงานในสองบทบาทคือเป็นทั้งผู้รับผิดชอบเรื่องการให้บริการและดูแลระบบ NSW ของไทยตามกฎหมาย และยังรับหน้าที่เป็นประธานคณะกรรมการพัฒนานโยบายและกำกับดูแลระบบ NSW ด้วย	บทบาทประเด็นนี้อาจนำมาสู่ความขัดแย้งในด้านผลประโยชน์ต่าง ๆ	<b>ระยะสั้น:</b> ใช้เวลาประมาณ 6 เดือนเพื่อหารือและหาข้อตกลงร่วมกัน
บทบาทของบริษัท โทรคมนาคมแห่งชาติ จำกัด และผู้ให้บริการเสริมภาคเอกชน (VASs) รวมไปถึงโครงสร้างการเก็บค่าธรรมเนียม ข้อผูกพันตามสัญญา (SLAs) ฯลฯ ยังขาดความชัดเจน	<p>เปิดให้ผู้มีส่วนเกี่ยวข้องทุกฝ่ายได้หารือร่วมกันเพื่อทบทวนโมเดลในการทำธุรกิจและโมเดลทางการเงินของระบบ NSW พร้อมทั้งแบ่งหน้าที่ในการให้บริการระบบ NSW ของภาครัฐและภาคเอกชนให้ชัดเจน</p> <p>จัดให้มีการพูดคุยระหว่างผู้มีส่วนเกี่ยวข้องทั้งหมดอย่างเปิดเผยเพื่อหารือถึงข้อดีข้อเสียของแนวทางการดำเนินธุรกิจและข้อกำหนดทางการเงินในรูปแบบต่างๆ ก่อนที่จะมีการสรุปข้อกำหนดในสัญญา ระหว่างกรมศุลกากรและบริษัท โทรคมนาคมแห่งชาติ จำกัด เนื่องจากทางเลือกที่ดีที่สุดจะต้องเป็นทางเลือกที่ทุกฝ่ายเห็นว่ามีคามยุติธรรมและสามารถดำเนินการต่อเนื่องอย่างยั่งยืนในระยะยาว พร้อมทั้งสอดคล้องกับกฎหมายของประเทศและกฎหมายระหว่างประเทศด้วย</p> <p>ให้หน่วยงานภาครัฐที่เกี่ยวข้องชี้แจงเพิ่มเติมเกี่ยวกับค่าธรรมเนียมที่เกี่ยวข้องกับการดำเนินงานระบบ NSW ให้ชัดเจน เนื่องจากไทยยังไม่มีข้อกำหนดที่ระบุเรื่องการกำหนดค่าธรรมเนียมที่เป็นรูปธรรม และการรวบรวมข้อมูลจากเจ้าหน้าที่ของหน่วยงานภาครัฐก็ยังคงความแม่นยำและความน่าเชื่อถือ</p>	<b>ระยะสั้น-กลาง:</b> ใช้เวลาประมาณ 6 เดือนในการหารือเพื่อกำหนดกฎหมายที่จำเป็นหรือขอมติคณะรัฐมนตรีและอีก 6-12 เดือนในการดำเนินงาน



ประเด็น	ข้อเสนอแนะเชิงนโยบาย	ระยะเวลา
<p>ขาดแหล่งข้อมูลด้านการค้าหลักที่เป็นแหล่งข้อมูลกลางที่เชื่อถือได้ และข้อมูลบนเว็บไซต์ของหน่วยงานต่าง ๆ ก็ยังมีความไม่สอดคล้องกันอยู่</p>	<p>รัฐบาลควรพิจารณาจัดตั้งพอร์ทัลข้อมูลการค้า (Trade Information Portal หรือ TIP) เพื่อเป็นแหล่งข้อมูลหลักที่เชื่อถือได้ ที่รวบรวมและบูรณาการข้อมูลที่เกี่ยวข้องกับการค้าทั้งหมดจากทุกหน่วยงานภาครัฐเข้ามาไว้ด้วยกัน ซึ่งแนวทางหนึ่งที่รัฐบาลสามารถทำได้ก็คือการปรับปรุงคลังข้อมูลการค้าแห่งชาติของไทย โดยกำหนดวัตถุประสงค์ใหม่ให้ครอบคลุมและปรับปรุงระบบให้มีความเป็นมิตรกับผู้ใช้งานมากขึ้น</p>	<p><b>ระยะสั้น-กลาง:</b> ใช้เวลาประมาณ 6 เดือนสำหรับการหารือเรื่องวิธีการ และ 6-12 สำหรับการดำเนินงาน</p>
<p>ติดตามการพัฒนาในโครงการที่ภาคเอกชนเป็นผู้ริเริ่มและขับเคลื่อนเพื่อส่งเสริมการสร้างห่วงโซ่อุปทานที่เป็นระบบดิจิทัล</p>	<p>สนับสนุนให้หน่วยงานต่าง ๆ ยังคงมีส่วนร่วมในการพัฒนาแพลตฟอร์มการค้าดิจิทัลระหว่างประเทศของไทย (NDTP) เนื่องจากโครงการดังกล่าวถือเป็นโครงการที่มีมูลค่ามาก เพราะมันเปิดโอกาสให้รัฐบาลสามารถติดตามการพัฒนาที่สำคัญในการนำเทคโนโลยีดิจิทัลมาช่วยเชื่อมโยงห่วงโซ่อุปทาน รวมถึงเปิดโอกาสให้รัฐเข้ามามีส่วนช่วยผลักดันหรืออำนวยความสะดวกในลักษณะที่เหมาะสมด้วย</p>	<p>อยู่ในระหว่างการดำเนินงาน</p>
<p>อนุญาตให้มีการแลกเปลี่ยนเอกสารอิเล็กทรอนิกส์ข้ามพรมแดนได้</p>	<p>แนวทางการดำเนินงานที่ตัวอย่างหนึ่งก็คือการระบุเรื่องการอนุญาตให้มีการแลกเปลี่ยนเอกสารอิเล็กทรอนิกส์ข้ามพรมแดนเป็นบทบัญญัติข้อหนึ่งในกฎหมายเพื่อให้แน่ใจว่าการปฏิบัติตามมาตรฐานสากลทั้งในปัจจุบันและอนาคตจะถือเป็นภาระหน้าที่ในกฎหมาย ทั้งนี้ ให้ถือว่าในเขตอำนาจศาลของประเทศ ข้อมูลบันทึกในรูปแบบอิเล็กทรอนิกส์ที่ได้รับจากประเทศอื่นนั้นมีความถูกต้องเช่นเดียวกันกับบันทึกอิเล็กทรอนิกส์ที่จัดทำขึ้นในประเทศด้วย ซึ่งหากข้อกำหนดนี้ไม่ได้รับการรองรับในกฎหมายการทำธุรกรรมทางอิเล็กทรอนิกส์ที่มีอยู่แล้ว ก็อาจพิจารณารวมข้อกำหนดนี้ลงไป ในกฎหมาย NSW ฉบับใหม่</p>	<p><b>ระยะยาว:</b> อาจต้องมีการปรับแก้กฎหมาย</p>
<p>แม้ว่าระบบ NSW ของไทยจะดำเนินการอย่างถูกต้องภายใต้</p>	<p>ด้วยเหตุนี้ การตัดสินใจที่สำคัญทั้งหมดจำเป็นต้องได้รับการอนุมัติโดย</p>	<p><b>ระยะสั้น:</b></p>

ประเด็น	ข้อเสนอแนะเชิงนโยบาย	ระยะเวลา
<p>กฎหมาย แต่ความจริงตัวระบบเอง นั้นยังไม่ได้ถูกกำกับดูแลโดย กฎหมายเฉพาะซึ่งระบุหน้าที่ สิทธิ และความรับผิดชอบของผู้มีส่วนได้ ส่วนเสียต่าง ๆ ไว้อย่างชัดเจน</p>	<p>คณะกรรมการพัฒนาระบบการบริหาร จัดการขนส่งสินค้าและบริการของประเทศ (กบส.) (ผ่านคณะกรรมการ NSW) และ/ หรือให้สัตยาบันโดยคณะรัฐมนตรีเป็นการ เฉพาะเท่านั้น ซึ่งการกำหนด ‘กฎหมาย NSW ของไทย’ ที่ครอบคลุมทุกแง่มุมของ การกำกับดูแลและการดำเนินงานจะช่วยให้ กระบวนการตัดสินใจง่ายและมีความ โปร่งใสมากขึ้น</p>	<p>ใช้เวลาในการร่างกฎหมาย ประมาณ 3-6 เดือน และเวียน เอกสารเพื่อผ่านเป็นตัวกฎหมาย</p>

## 1 Background and Objectives

At the request of the Government of Thailand (GOT), the World Bank Group (WBG) has undertaken to deliver advisory recommendations under a RAS<sup>9</sup> Agreement between the WBG and the Office of Public Sector Development Commission (OPDC). The RAS Agreement, *Technical Assistance on Furthering Business Environment Reforms in Thailand*, comprises the following components:

- 1) Efficient Tax Administration
- 2) Trade Facilitation
- 3) Public Procurement Efficiency

This report is part of the Trade Facilitation component which is expected to focus on the two following areas:

- a) Operationalization of National Trade Facilitation Committee (NTFC)
- b) Undertake a gap analysis on the degree of automation for the full and effective implementation of the Thai National Single Window (TNSW).

This report, in particular, focuses on the gap analysis for the TNSW. This report contains an analysis of the current functional model of the Thai National Single Window and outlines a potential good practice model for consideration in a future enhancement of the TNSW.

The report was compiled by a World Bank team (“the Mission”) comprising international and national consultants. This World Bank team (“the Mission”) led by Alina Antoci, Senior Private Sector Specialist (Component Lead for Trade Facilitation), and Luciano Pugliatti – Trade Facilitation, Customs Reform and Border Management Consultant, visited Thailand on two occasions: September 19 through 23, 2022 and November 28 through December 7, 2022. William Gain, Global Lead, Trade Facilitation & Border Management provided remote assistance. Mr Thanapat Reungsi - Consultant, Mr Kwanpadh Suddhi-Dhamakit – Country Officer and Ms Sakulrat Bovornsantisuth – Consultant assisted the mission from the World Bank Bangkok Office.

The World Bank team (“the Mission”) also worked with Kudun Partners, a Thai law firm, in the analysis of the legal framework that underpins the operation of the Thai National Single Window.

The primary objectives of the missions for the RAS were to meet with relevant stakeholders in order to collect the information necessary to formulate conclusions and make recommendations.

Both sub-components a) and b) above under the Trade Facilitation component concern alignment with undertakings made by the GOT to the World Trade Organization (WTO) as part of becoming a party to the Trade Facilitation Agreement (TFA).

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<sup>9</sup> RAS: Reimbursable Advisory Services

Specifically, the implementation of a Single Window is a commitment under the TFA's Article 10.4 which states<sup>10</sup>:

#### **4. Single Window**

4.1 Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

4.2 In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

4.3 Members shall notify the Committee of the details of operation of the single window.

4.4 Members shall, to the extent possible and practicable, use information technology to support the single window.

Single Window was notified to the WTO by Thailand, in July 2015, as a 'Category A' meaning that a Single Window was already fully implemented at the time, and it would be functional by the date the agreement came into force (February 2017).

The objective of the WBG Mission was to carry out a gap analysis for the TNSW implementation and an evaluation of the TNSW program in order to:

- d) establish whether TNSW has the necessary attributes to fulfil the TFA's requirements for a single window which conforms to international standards of good practice;
- e) ascertain whether any issues or problem exist which would constitute an impediment to deriving the full benefits intended; and
- f) make recommendations as to what actions should be taken to attain the objective of a full and effective implementation of the Single Window.

The WBG Mission conducted interviews with various stakeholders and users of the TNSW (see list attached at

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<sup>10</sup> Article 10.4, Trade Facilitation Agreement, WTO, 2014

*Appendix A* and observed the operation of TNSW at the Customs office and the Food and Drug Administration's (FDA) office at Suvarnabhumi Airport.

Besides reviewing the TNSW software platform and mode of operation, the WBG Mission also examined issues of governance, institutional structure, program management, and the legal framework which are essential aspects for a successful implementation of a National Single Window.

## 2 Evaluation Benchmark

### 2.1 Good Practice Model of National Single Window

As mentioned above, The WTO's TFA requires members to commit to the implementation of a Single Window, as defined above.

The WTO's definition of Single Window is in line with the universally recognized standard of good practice for what constitutes a Single Window which is provided by UN/CEFACT<sup>11</sup> in *Recommendation No. 33*. Recommendation 33 defines a Single Window as<sup>12</sup>:

*"A facility providing trade facilitation that allows parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfil all import, export, and transit-related regulatory requirements. Individual data elements should only be submitted once electronically".*

This, together with other UN/CEFACT recommendations, provides the primary benchmark for what constitutes the *de-facto* standard of good practice for the implementation of an NSW.

A similar standard is set by ASEAN for the national single windows which member states are expected to implement as a means of creating the intra-national ASEAN Single Window (ASW)<sup>13</sup>.

- Single Submission of data and information;  
Meaning each separate data item pertaining to the release/clearance of a shipment is only required to be supplied once (whether by a commercial operator or a government agency)
- Single and Synchronous processing of data and information;  
Meaning that the handling of the data in a specific release/clearance process by government agencies should involve one-time handling, from a Trader's perspective, that may be synchronous across agencies, and
- Single Decision-making for Customs release and clearance of cargoes  
Meaning a single point of decision for the release/clearance of cargoes by Customs on the basis of decisions, if required, taken by line ministries and agencies and communicated in a timely manner to Customs

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<sup>11</sup> UN/CEFACT is the United Nation's organization that promotes trade facilitation through standardization of trade procedure and electronic business.

<sup>12</sup> Recommendation No. 33, UN/CEFACT, 2005, Revised 2019

<sup>13</sup> ASEAN Secretariat, ASW Technical Guide, March 2006

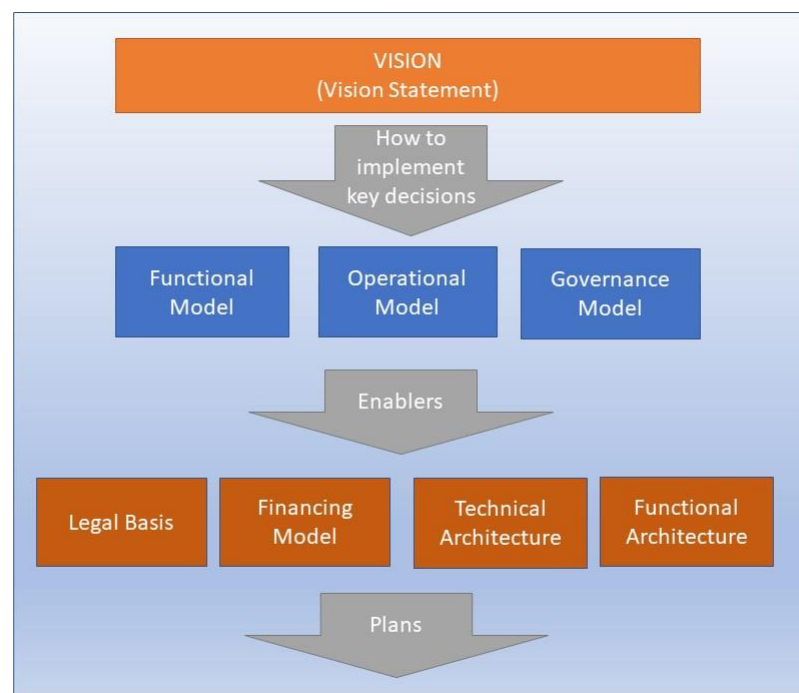
The definitions above imply that five key conditions should be met:

1. It must include the participation of all parties involved in trade and transport (both from the public and private sector). We typically refer to these parties as “stakeholders”;
2. Use of internationally recognized standards for data and document exchange between parties;
3. Single point for electronic submission by an economic operator of all data concerning a transaction;
4. Fulfilling regulatory requirements, i.e., should allow regulatory functions to be performed by Government agencies (GA) based on a legal foundation; and
5. Single submission of individual data elements, i.e., individual data elements which have been submitted should not need to be submitted again. This does not mean that all individual data elements must be sent at the same time - data can be sent progressively as and when it becomes available.

In addition, pragmatically, any assessment of Single Window should determine whether the Single Window initiative is substantially seen to be cost-effective and beneficial by its intended users in terms of fulfilling its objective of trade facilitation, both nationally and internationally.

The above is usually achieved when an enterprise, such as the TNSW, as well as delivering benefits to its users and stakeholders, is also seen to be well managed, fair to all parties (e.g. small and large traders equally), value for money (i.e., any costs incurred are seen as being commensurate with the benefits) and operating within the parameters of the law. For this it is necessary that all the components, beyond its technology architecture, fit together in harmony.

The components of a typical single window program are illustrated in the picture below.



*Figure 1: Components of a Single Window program*

The entire NSW program should be informed by a **Vision**, that is, the key objectives to be achieved and how to achieve them. The Vision, ideally, should have been elaborated by consensus with all the stakeholders and participants and endorsed by Government at the highest level.

The next step, informed by the Vision, is to build the strategy for implementation. The **Strategy** is effectively a high level set of **Key Decisions** which pick up from the Vision and expand it into a series of desirable outcomes with regard to the various specific components of the NSW.

The Strategy seeks to apply the principles of the Vision to the specific components that will need to be elaborated in order to develop an actual **Implementation Plan**.

The diagram at *Figure 1* above illustrates the steps required to build the Strategy.

The three key strategic decision areas above are inter-related.

- The **Functional Model** determines the mode of operation of the NSW which fulfils the Vision. This mode of operation involves equipment, networks, business processes, Help Desk, expert personnel (ICT and business analysts) and will provide critical services to the public and to GAs for which whoever operates these facilities must take responsibility.
- It follows that the key decision about who the operator of the NSW will be (the **Operational Model**) must take into account whether the candidate organization has the necessary capacity in-house or the ability to manage suppliers in order to deliver those specific services. Equally, the organization must have the legal personality and willingness to enter into binding Service Level Agreement (SLA) with its clients.
- The Operator cannot function unsupervised and must be accountable to an authority that represents the highest level of Government. The **Governance Model** concerns the choice of organization that will perform this overall supervisory role. The governing body must have an adequate legal personality and political mandate to report to Government, ensure that Government's policy decisions are implemented by the Operator, ensure good governance of the financial operation of the NSW and, when necessary, seek sources of funding for innovation, expansion, etc.

Ultimately, different solutions may be acceptable in different countries as long as the fundamental principles above are respected.

The three key decision areas above determine the direction of the other components of the NSW program. These components are essentially 'enablers' of the key decisions described above. These are:

- **Legal Basis**

A NSW must operate on a solid legal basis.

The law must be an enabler of the vision – not an impediment. Often, existing legislation is invoked as a reason for not letting go of outdated practices. However, every issue raised can generally be addressed by modern legislation. If there is a political commitment to the objectives of the vision, then any legal obstacles can be overcome and, if the laws are not adequate, a plan for legal change must be developed.

The Legal Basis is dependent on the Functional Model in that it has to support that mode of operation. (e.g. "an electronic environment", "online transactions").

Legislation is also usually required in some form to establish the governance and operational structure of the NSW.



- **Financing Model**

The **Financing Model** concerns the way in which the ongoing operational costs of the NSW are funded.

The operational costs comprise the costs of keeping the NSW running on a day-to-day basis and therefore comprise network usage, computer equipment maintenance, software support, Help Desk costs, and any organizational costs such as rent, utilities, transport and, most importantly, staff costs.

The key decision concerns the financing of these costs, with the most important question being whether a charge should be made to the users and, if so, how and at what level it should be set. It is conceivable that a Government may choose not to charge anything to the trade and finance the operation entirely through budget appropriation. This, however, puts the operation of the NSW on a precarious basis and subject to political fluctuations.

What should be remembered when considering whether to charge a fee or the level of that fee is that it is legitimate to charge a fee for a service provided that the fee is set at a level commensurate with only recovering the cost of operation. This is the model adopted by most countries in alignment with the GATT and TFA Agreements<sup>14</sup>:

*“All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.”*

The same principle is re-stated in Article 6.2 of the TFA.

- **Functional Architecture**

The Functional Architecture is informed by the Vision in terms of what the Stakeholders expect the NSW to be, e.g. “an electronic platform for all trade related transactions”.

The Functional Architecture concerns how the NSW will operate to deliver its services to its users. This involves both automated and non-automated functions and essentially describes the transactions which will take place over the NSW between traders and GAs (B2G) and between GAs (G2G).

The Functional Architecture, coupled with factors such as the number of potential transactions and the technical description of the data elements that are carried by these transactions, determines the potential volume of traffic in bytes which will feed into the Technical Architecture (which must be adequate to support the volume of traffic) and the Financing Model to provide the basis for calculations for potential charging of fees.

- **Technical Architecture**

The **Technical Architecture** concerns the equipment and infrastructure required to support the operation of the NSW. This includes hardware, peripherals (e.g., workstations, printers, etc.) and

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<sup>14</sup> GATT, General Agreement on Tariffs and Trade, 1947, Article VII

the required network infrastructure. It also includes the operating system, network and application software, i.e., the software stack.

To summarize, the diagram below shows, at a high level, how all the above components of a NSW program are inter-connected and inter-dependent.

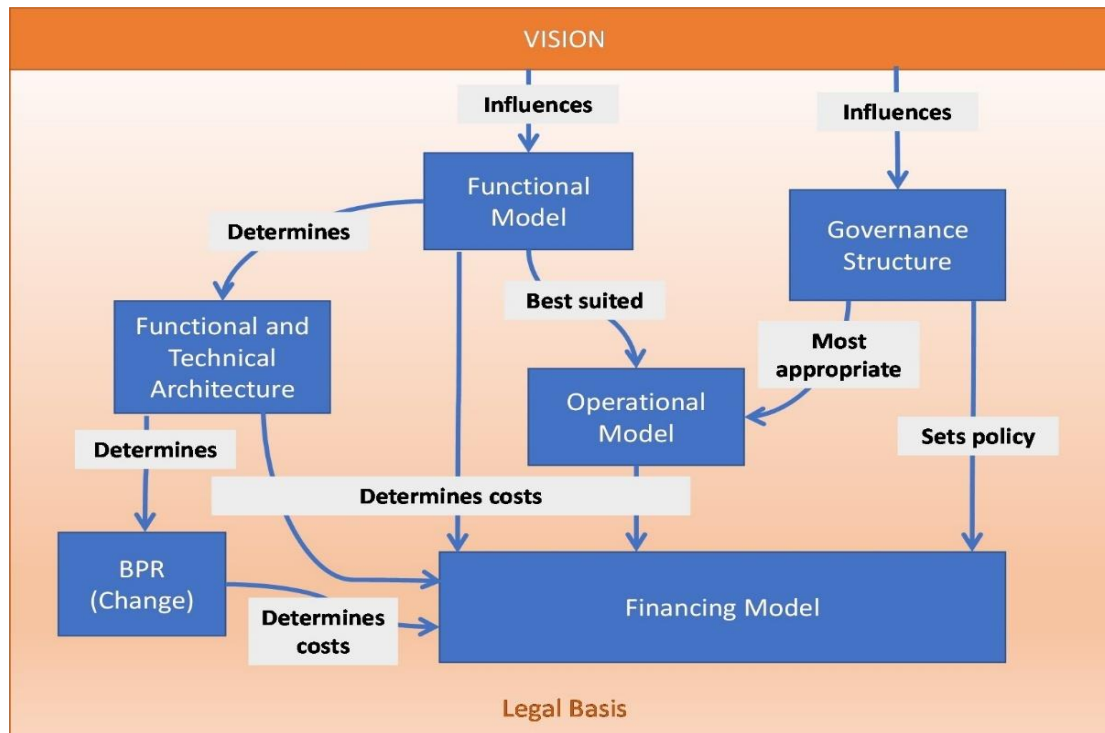


Figure 2: Inter-relationships between components of NSW

## 2.2 Assessment of the Thai National Single Window

The Mission Team analyzed all the factors above in order to make an assessment as to whether the TNSW is substantially aligned with the good practice model of NSW, in all its components. The identified gaps informed recommendations for the way forward.

In the sections below, this report provides an analysis of these factors as related to the TNSW and presents its conclusions and recommendations in *Section 14 below*.

It is not expected that all elements would have been met in full. Indeed, as the case studies published by UN/CEFACT illustrate<sup>15</sup>, very few countries can be said to have implemented an ideal Single Window in full (i.e., embracing all trade transactions and all participants) and according to the pure definition of a single electronic submission, as predicated by UN/CEFACT, WCO, WTO and others.

In formulating conclusions, a pragmatic view was taken focusing on the benefits accrued and on any evident gaps. A comparative illustration of the approach to NSW by different countries may be found at *Appendix C*.

<sup>15</sup> <https://digitallibrary.un.org/record/556563?ln=en>

### 3 Establishment of the Thai National Single Window

The concept of implementing a national single window as a platform for exchanging data electronically between traders and border agencies was initially established by a *Cabinet Resolution of 6 December 2005*.

The focus of the Resolution was Thailand's participation in the ASEAN Single Window (ASW). A key requirement of ASEAN's Trade in Goods Agreement (ATIGA) is that members should implement a National Single Window in order to interconnect with the ASW. The Resolution tasked Customs with taking the lead both in establishing the National Single Window and connecting it with the ASW. However, the Resolution was silent in terms of what constitutes a NSW, what Customs' rights and responsibilities would be, how the NSW should be constituted and governed or, indeed, any aspects of what it should be doing. Critically, the Resolution did not nominate who should operate the TNSW and on what basis.

It was not until 2008, when the decision was made that Customs should operate the TNSW, that momentum picked up to establish the infrastructure to enable all agencies to connect and exchange all the information electronically rather than using paper.

In 2020 Customs handed over responsibility for running the infrastructure and facilities and for maintaining and supporting the systems to National Telecom (NT).

Both decisions above were duly approved by the *TNSW Sub-Committee* (see *Section 11 below*) and by Cabinet.

## 4 Scope and Status of the Thai National Single Window

The scope of the TNSW grew gradually over the years and, currently, it provides a platform that allows exchange of electronic messages between traders and 37 GAs (B2G), including Customs, and between GAs and Customs (G2G). The list of all the agencies connected and the number of electronic documents processed by each is attached at *Appendix B*. Column (A) represents the connections where the exchange of data takes place system-to-system. Column (B) represents the connections that involve an officer's interaction with an automated system (the majority) and Column (C) is a residual number of transactions which are still performed using paper documents.

Currently the TNSW provides services to approximately 15,000 users and handles approximately 10.3m transactions per year, including B2G and G2G.

The TNSW is connected with 18 banks and the majority of payments for duties, charges and fees are made electronically.

The TNSW allows for virtually all import/export clearances to be obtained through electronic submission of documents and payments, without the need for paper documents, manual signatures or physical interaction, unless documentary or physical inspections are required.

## 5 Current Mode of Operation of Thai National Single Window

The scope of the TNSW is usually presented in published literature and during meetings via the following diagram.

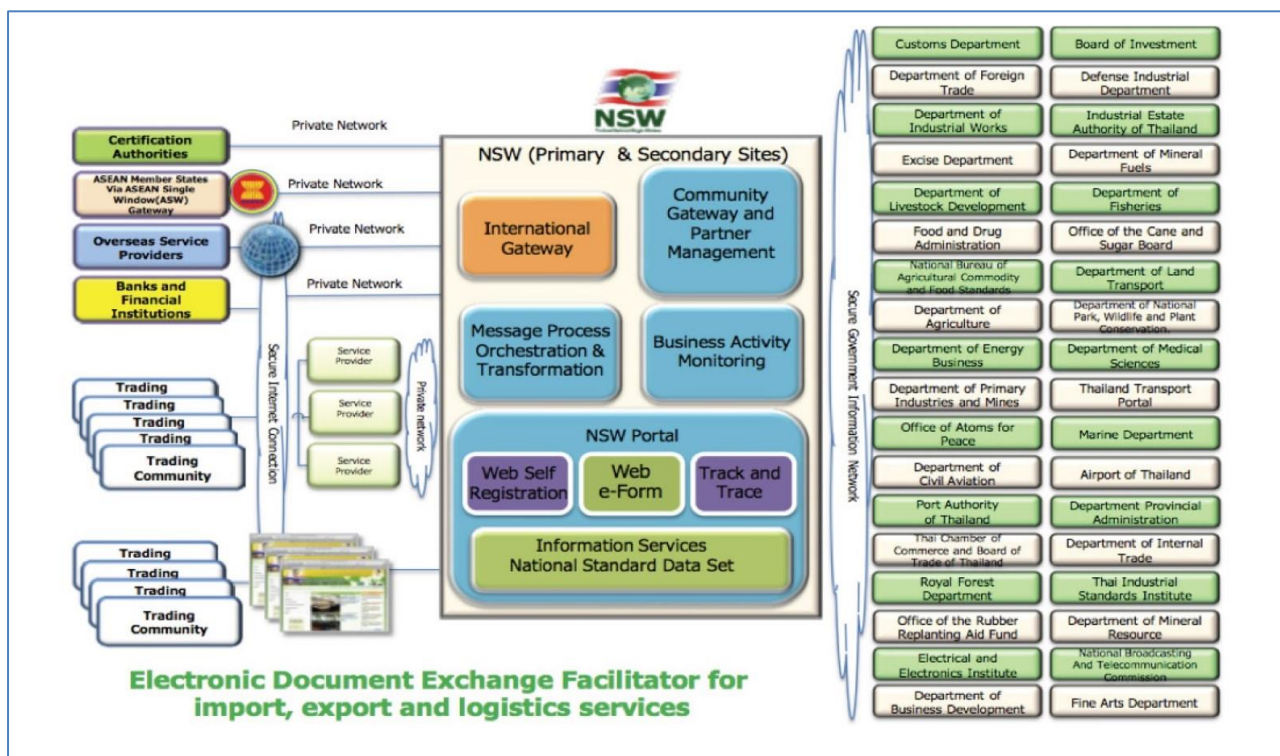


Figure 3: Conceptual representation of the TNSW

The diagram above shows an environment where the TNSW acts as a central hub for various interactions between stakeholders and users. The diagram does not show what these interactions are and what the processes are that perform these interactions.

As such the diagram represents a ‘conceptual’ environment, i.e. an environment which encompasses all the *potential* interactions between stakeholders and service providers but where, in reality, some of these interactions are yet to be implemented and other are not necessarily performed through what is at present referred to as the TNSW.

In reality, from what the Mission has been able to ascertain, the functional model for the processes required to clear goods with Customs and other agencies for import or export is more accurately represented by the following diagram. This simplified diagram shows the flow of key interactions for the clearance of import or export goods which, typically, require certificates, licenses, permits or other forms of authorization (CLPA) to be issued by one or more agencies and fees or duties to be paid. This business process applies to those GAs that have a back office system and all the actions shown are automated, except for any visual vetting that an officer may need to perform in order to approve or reject the application. This is the majority of GAs.

In the diagram, the actions shaded in pink may be repeated for each consignment depending on how many GAs need to issue a CLPIA for the goods.

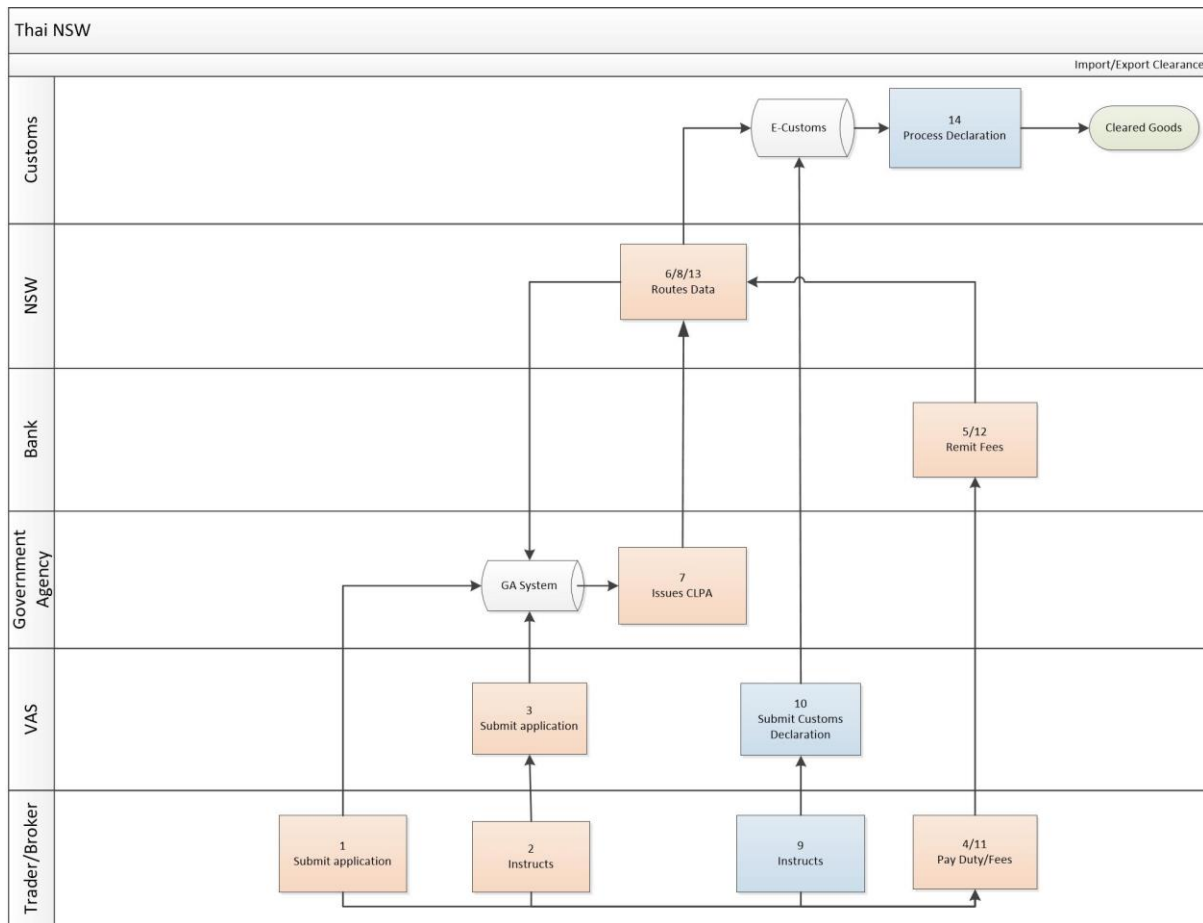


Figure 4: TNSW Business Process Flow

Business Process Steps	
1.	In a typical case, a trader will submit an application directly to the GA's own system via web front-end. To do so the trader needs to be registered and have access permissions for that system.
2.	In some cases, traders prefer to commission a Value Added Service provider (VAS) to submit the necessary applications on their behalf.
3.	The VAS submits the application to the GA on behalf of the trader.
4.	Typically the GA's system notifies the trader of the amount of fees or duties to be paid and the trader will pay via e-banking.
5.	The Bank remits the fees to the relevant agency; and ...
6.	... notifies the agency that payment was made via the TNSW.

<b>Business Process Steps</b>
7. The GA issues a CLPA and routes the message to the TNSW.
8. The TNSW delivers the message to the e-Customs system.
9. When the trader is ready to submit a Customs declaration, the trader instructs the VAS.
10. The VAS submits the Customs declaration to e-Customs.
11. The trader pays the fees through e-banking.
12. The Bank remits the fees, and ...
13. ... notifies e-Customs that payment was made via the TNSW.
14. In e-Customs the declaration is reconciled to the LPI number/s issued by the GA's application and that have been quoted in the declaration submissions. This ensures that Customs may rely on the fact that all due prior authorizations have been obtained and, therefore, no re-submission of documents is required.

A variation of the above model is where a GA does not have a front-end to their back-office system and only requires certain information, e.g. whether a payment has been made, in order to authorize the transaction. This is the case, for example, with the Rubber Authority of Thailand (RAOT) for exports of certain rubber products. The trader pays the fee due through the TNSW and the TNSW send a message to the RAOT's back-office accounting system, *e-Cess*, directly. No human interaction is required. Discovery of the fee is a process that takes place outside the domain of the TNSW. The front-end to enter the fee may be provided by a VAS.

An alternative to the above business process has been introduced by National Telecom (NT), the nominated TNSW operator, in the shape of the *Single-Entry Form* (SEF). The SEF is essentially a front-end web facility which, in theory, would provide the same front-end mechanism for different GAs' systems. However, there seems to be a reluctance from traders to take up use of the SEF as it seems that it only works for some products and that it does not work as well as existing own GAs' systems or it is simply not as convenient as using a VAS.

## 6 Considerations for the Way Forward

The model of single window implemented in Thailand is clearly not the “single submission” model as predicated by UN/CEFACT and recommended by the WCO. The interactions between traders and the GAs (other than Customs) required to obtain certificates, permits, licenses or other forms of authorizations (CLPA) prior to submitting a declaration to Customs, takes place directly on the GAs’ own web-based systems connected to their back-office system. This is the case, for example, for the FDA that operate a system called *Skynet*, the Department of Fisheries (DOF) that operate the *Fisheries Single Window* or the Department of Foreign Trade (DFT). This means that a trader (or their brokers, if acting on their behalf) need to log into each of the GAs’ systems separately, often using different login methods and credentials as there is no central registration system, and must know how to navigate different systems.

The Mission was given to understand that it is the norm that more than one authorization may be required from different agencies, in some cases, up to eight.

Furthermore, eight agencies remain that do not have a back office system or a web front-end and therefore still require paper based physical interactions.

Submitting a Customs declaration to e-Customs is also a separate process performed primarily through the VAS providers.

In this context, the TNSW is essentially a routing mechanisms for messages and the data related to traders’ transactions ends up being stored and duplicated in e-Customs as well as in each of the different GAs’ enterprise systems. The TNSW does not retain any data and does not add value by processing any data. Consequently, it is not possible to leverage the TNSW for taking advantage of functions that would benefit from a central data repository, such as risk management, trader relationship management, coordinated border management, post-clearance audits, trade patterns intelligence, global statistics, etc.

That said, the implementation of the TNSW has achieved many positive results, in particular, near total elimination of physical paper submission and automation of the majority of agencies involved in the control of imports and exports.

Nonetheless, if some of the objectives above are found to be desirable and it is considered important to address the duplication of inputs mentioned above, then some form of centralized processing and storage facility would be necessary along the lines of the ‘single submission’ model described in the next section (*7 Single Submission Single Window Model*). This would also have implications for the institutional basis of governance and operations.

A solid foundation for a ‘single submission’ model already exists as the data from all the participants of the TNSW has already been harmonized in messages based on the WCO’s Data Model 3.0 standard. However, this would benefit from being updated to a more recent version<sup>16</sup>, as later versions tend to include a greater number of data elements related to the business of non-Customs GAs.

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<sup>16</sup> The latest version of the WCO Data Model is 3.11 and Version 4.0 is scheduled for June 2023



Something delivering the benefits of Single Submission which does not involve substantially subverting the existing platform could be achieved in different ways which build on the existing systems without necessarily starting again from the beginning.

## 7 Single Submission Single Window Model

In this section the “ideal” Single Submission model as envisaged by UN/CEFACT, WTO, WCO and others is illustrated.

It has to be noted that very few countries in the world, if any, have implemented a “pure” model of single window such as the one below. Constraints of costs or legacy system, not to mention failure to provide a solid legislative basis, have been contributing factors.

Nonetheless, the benefits of the model are attainable with proper planning and if a clear strategy is in place.

The model is illustrated here for reference purposes.

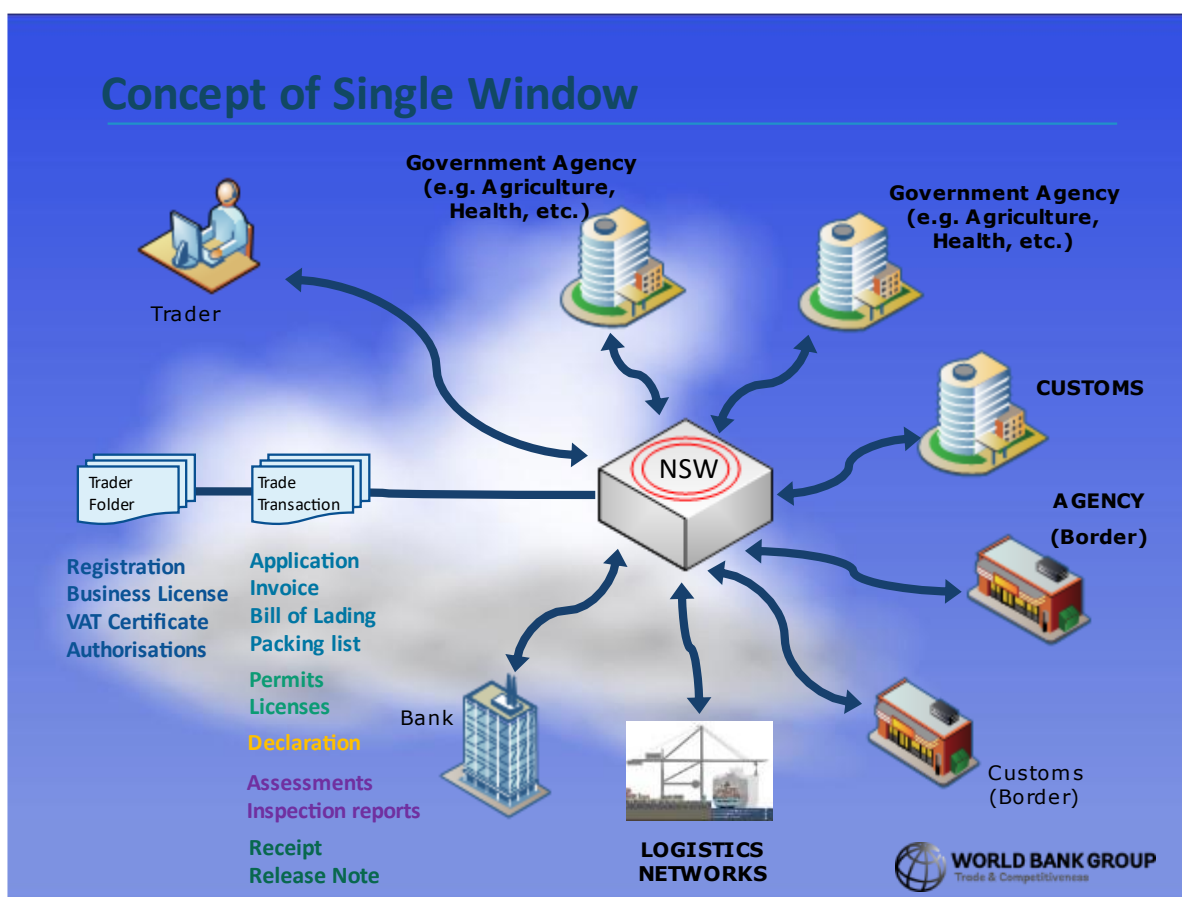


Figure 5: Concept of Single Window

This picture above illustrates the model of Single Window expounded by the international definitions and endorsed by the WCO and the meaning of “single submission”.

In this functional model, the National Single Window (NSW) is a computer centre connected via private networks or the Internet to all the users, i.e. traders (importers, exporters, Customs brokers, freight forwarders), Customs and other Government agencies, the banks and other network operators. If these users have an in-house enterprise system to carry out their work (e.g. e-Customs) the NSW will interface with these systems via an exchange of electronic messages. Users who do not have back-office enterprise systems communicate with the NSW via a web-based front-end.

The Trader submits information electronically, only once, to the NSW relating to the goods that need clearing. This could be before the goods are shipped in order to obtain the necessary licenses, permits or authorizations and/or when the goods arrive in order to obtain border clearance. This does not

mean that all information must be submitted at the same time. Information may be submitted incrementally as and when it is required and it becomes available or when there is a need for a change.

The Trader always submits information to the NSW facility instead of submitting it individually to each agency. All responses by the agencies (e.g. issue of license, queries, rejection, clearance, etc.) are routed to the trader via the NSW.

The NSW maintains an electronic 'Trader Folder' containing standing details of the trader (e.g. business license, security credentials, etc.) and a 'Transaction Folder' where all the electronic documents relating to each transaction will build up over time (e.g. copy of invoice, copy of bill of lading, etc.) as well as allowing tracking of the status of each transaction (e.g. application for license, issue of license, submission of declaration, clearance, etc.) through its various stages.

The NSW should have established business rules built-in in order to route the data to each agency responsible for issuing authorizations at the right time and in the right sequence based on the commodity code and other parameters and will then coordinate responses as required. The NSW would also interface with the banks in order to carry out electronic payments for fees or duties and with other logistics networks (e.g. the port or airport community systems) in order to exchange information needed by the agencies to process the clearance such as manifests, notices of arrival, warehouse movements, etc.

In this model the NSW retains all trader data in a central database. The GAs have a choice as to whether they also replicate the data in their own back office systems. Where GAs do not have a back-office system the NSW effectively acts as "cloud" storage for them.

The advantage of retaining all the trader and transaction data in a central repository is that it facilitates inter-agency collaborative functions which benefit or, indeed, rely on data sharing. These are functions such as risk management, trader relationship management, coordinated border management, post-clearance audits, trade patterns intelligence, global statistics, etc.

## 8 International Experience

When compared with experience in other economies comparable to Thailand, especially in the region, the TNSW must rank among the most successful and effective implementations of a Single Window in terms of the outcomes, even though it does not necessarily conform to the recommended good practice model of Single Submission.

In reality, very few instances of Single Window can be said to represent the pure Single Submission, as mentioned in *Section 7 above*. A number of countries have implemented a Single Submission model for the issuance of CLPAs, in other words only for the non-Customs CLPA-issuing agencies but still require a separate submission for the Customs declaration, like in Thailand.

One of the main reasons for this is the existence of legacy system which would be too costly to replace or too disruptive to re-engineer from scratch, which are very legitimate reasons.

Thailand would benefit from learning about other countries' experience, not so much to necessarily achieve a pure Single Submission model, but to understand how specific issues were dealt with or challenges overcome from a starting position which may bear similarities to the situation currently in Thailand.

It is worthwhile studying the Case Studies on the implementation of Single Window published by UN/CEFACT<sup>17</sup>. A repository of voluntary case study contributions has also recently been made publicly available<sup>18</sup>.

Another UN/CEFACT repository contains case studies of *Single Submission Portals*<sup>19</sup>. These are examples related to Recommendation No. 37<sup>20</sup> and, albeit related, are not to be confused with a *regulatory* single submission National Single Window. Single Submission Portals are facilities that allow interoperability, through a single portal, of logistics B2B systems, port/airport community systems and B2G systems such as the NSW. **Thailand may find studying these case studies worthwhile in relation to future developments such as the National Digital Development Platform (NDPT).**

When studying case studies, it is always wise to seek reassurance that the statements made correspond to reality and do not constitute a future state yet to be implemented.

With this in mind we have singled out a short list of NSW implementations which Thailand may find worthwhile studying in more details, maybe through study tours or bilateral contact. This small selection is based on a balance between comparable economic conditions, common regional imperatives and known achievements in terms of facilitation.

Whilst these countries have been selected on the basis of being somewhat comparable with Thailand, comparisons based on volumes of transactions, number of different CLPAs issued, agencies connected etc. are somewhat futile as the numbers reflect the trading situation which is different in each country.

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<sup>17</sup> <https://digitallibrary.un.org/record/556563?ln=en>

<sup>18</sup> <https://unece.org/trade/uncefact/SingleWindowRepository>

<sup>19</sup> <https://unece.org/trade/uncefact/SSPRepository>

<sup>20</sup> <https://unece.org/info/Trade/CEFACT/pub/2402>

The purpose is, however, to study how specific challenges were overcome in practice and whether any lessons can be learned which would be useful to Thailand.

Country	Name of NSW Facility	Brief Description	Agencies Connected
<b>Singapore</b>	Tradenet <sup>21</sup>	TradeNet is an electronic Single Window that requires users (declarants) to submit their documents in the form of electronic records, and facilitates the issuance of electronic permits for trade clearance.	12
<b>Malaysia</b>	Dagangnet <sup>22</sup>	This paperless, web-based permit application system enables importers, exporters and forwarding agents to apply for import/export permits from Permit Issuing Agencies.  Web-based application allows importers and exporters to submit import/ export declarations to the Customs securely.	30+
<b>South Korea</b>	Korean SW <sup>23</sup>	A platform where traders can lodge various clearance-related applications such as a quarantine application along with import/export declaration with a single entry point. This is then linked to the Customs Clearance System UNI-PASS.	40

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<sup>21</sup> <https://repository.unescap.org/handle/20.500.12870/513?show=full>

<sup>22</sup> <https://repository.unescap.org/bitstream/handle/20.500.12870/516/ESCAP-2010-PB-UNNEXt-Case-Malaysia-national-single-window-n4.pdf?sequence=1&isAllowed=y>

<sup>23</sup> [https://unece.org/fileadmin/DAM/cefact/single\\_window/sw\\_cases/Download/Korea\\_Customs.pdf](https://unece.org/fileadmin/DAM/cefact/single_window/sw_cases/Download/Korea_Customs.pdf)

## 9 Legal Assessment

The entire Thai National Single Window (TNSW) must be under-pinned by a solid legal foundation and all the components, in one way or another, need addressing in terms of what extent they need underpinning by legislation and to what extent current legislation is adequate to do so.

This document is the result of an analysis of the existing legal framework in Thailand, the purpose of which was to establish:

- a) to what extent current legislation can be leveraged to provide the enabling environment required by the TNSW;
- b) what are the gaps in legislation that need to be filled in order to provide a basis for certain aspects of the TNSW;
- c) to what extent current legislation constitutes an impediment to implementing aspects of the TNSW;
- d) what level of legislative change, i.e. new legislation or amendments to existing legislation, is required to fill the gaps and remove the impediments.

In broad terms, the fundamental issues that legislation needs to address in order to allow the implementation and operation of a National Single Window (NSW) are:

- Establishing the existence of the NSW, with all the changes that it entails to the way business is currently conducted between traders and Government entities and the authority conferred to various entities (existing or new). This may be required to be written in law either through primary law (e.g. a law or an act of parliament), or secondary legislation (e.g. Cabinet resolutions, various committee resolutions, or ministerial regulations and orders);
- The law must allow electronic transactions generated through the NSW (e.g. a license, a permit, etc.) to have the same validity in law as the present paper document. Equally, an electronically generated authorization must have the same value that a physical stamp or signature have at present;
- The law must also allow for acceptance of copies of certain supporting documents which may, traditionally, require to be presented as an original (e.g. a Bill of Lading, a Certificate of Origin, etc.) and accept an electronic facsimile (i.e. an electronic file in PDF or JPG format) in lieu of originals;
- The above means that Government Agencies (GA) and, in particular, Customs must, within their legal framework, be able to accept electronic records without the need for physical submission of paper, witnessing of signatures, etc.
- The basis for financing the operation of the NSW, if it involves charging a fee for the services, will require to be legislated for;
- Issues of data privacy, commercial confidentiality, protection, etc. must be addressed and underpinned by laws;
- Somewhat related to the above, issues of data sharing between government agencies need to be addressed as the NSW creates an environment where data does not necessarily sit with one GA but sits in an environment which is shared by GAs for their different purposes. Indeed, the nature of the NSW makes it possible and desirable for agencies to share data to improve their risk and fraud targeting capabilities.

Broadly speaking, primary laws are issued at national level and implementing regulations are issued at ministerial level or below in order to give effect to the primary laws. In this report, whenever we use the

terms ‘law’ or ‘legislation’ generically, unless it is specified to the contrary, the terms are intended to cover all types of instruments that carry legal value. These may include primary laws and ‘regulations’ issued at ministerial level or ‘instructions’ issued at department level, regardless of their name which could be things like ‘decree’, ‘sub-decree’, ‘notice’, etc. The term ‘regulation’ is generically used to indicate non-primary implementing legislation.

This document is organized in sections which address the issues above and make recommendations according to the findings.

## 9.1 Methodology

### 9.1.1 Method

The Team collected copies of laws, regulations, etc. from the following sources:

- 1) Website of the Office of the Public Sector Development Commission;
- 2) Website of the Royal Gazette;
- 3) Website of the Department of Intellectual Property;
- 4) Website of the Secretariat of the Cabinet;
- 5) Website of the Customs Department;
- 6) Thai National Single Window Website;
- 7) Website of National Telecom Public Company Limited;
- 8) Website of the Ministry of Digital Economy and Society; and
- 9) Website of the Office of the Council of State.

A list of the legislation collected and analyzed is attached at *Appendix A*.

This document includes the results of the review, feedback, informal meetings with key stakeholders, research, and technical discussions with Thailand’s legal advisers specializing in e-Government issues.

In conducting this exercise the following international good practice guidelines have been taken into account.

Firstly, as to the definition of what constitutes a Single Window, the guiding principle is UN/CEFACT’s Recommendation No. 33 (*Recommendations and Guidelines on Establishing a Single Window*), issued in 2005 and updated in July 2019. Recommendation No. 33 defines a Single Window as:

“A Single Window is defined as a facility providing trade facilitation that allows parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfil all import, export, and transit-related regulatory requirements. Individual data elements should only be submitted once electronically.”

To further clarify, a footnote to the above defines ‘facility’ as:

“In this definition, facility means the representation of the window by which all the data and document are submitted once. It can be a visible digital portal or a standardized invisible orchestration allowing any data or document submitted once, to be available and valid for all the participants in the Single Window.”

The definition above clearly encapsulates the key features of a NSW which will need to be provided for in the legislation, if they are not supported by legislation already in force.

Recommendation No. 33 summarizes the requirements of a legally enabling environment as follows (para 59):

“Establishing the necessary legal environment is a pre-requisite for Single Window implementation. Related laws and legal restrictions must be identified and carefully analysed. For example, changes in legislation can sometimes be required in order to facilitate electronic data submission/exchange and/ or an electronic signature system. Further, restrictions concerning the sharing of information among authorities and agencies, as well as organizational arrangements for the operation of a Single Window, may need to be overcome. Also, the legal issues involved in delegating power and authority to a lead agency need to be examined.”

### 9.1.2 Fundamental Principles

In terms of the process for establishing the legal basis, the key guiding principles are outlined in UN/CEFACT’s Recommendation No. 35 (*Establishing a Legal Framework for an International Trade Single Window, 2010*).

Recommendation No. 35 provides the following checklist of legal issues to be considered when establishing a legal framework for international trade single windows.

- a) Has the legal basis for the implementation of the Single Window facility been examined/established?
- b) Has an appropriate organizational structure for the establishment and operation of a Single Window facility been chosen?
- c) Are proper identification, authentication and authorization procedures in place?
- d) Who has the authority to demand data from the Single Window?
- e) When and how data may be shared and under what circumstances and with what organizations within the government or with government agencies in other countries and economies?
- f) Have proper data protection mechanisms been implemented?
- g) Are measures in place to ensure the accuracy and integrity of data? Who are the responsible actors?
- h) Are liability issues that may arise as a result of the Single Window operation addressed?
- i) Are there mechanisms in place for dispute resolution?
- j) Are procedures in place for electronic archiving and the creation of audit trails?
- k) Have issues of intellectual property and database ownership been addressed?
- l) Are there any situations where competition issues may arise?

In addition, other issues that may need to be considered in terms of requiring legislating are:

- a) Financial issues, i.e. if a fee is involved
- b) International Obligation, in the case of countries that have commitments to participating in data exchange programs with regional or other international partners

This document attempts to address the above and other issues and make recommendations where appropriate.

We have grouped these issues into the following key fundamental themes for which legislation must be in place to underpin all the issues above in order to be able to implement a NSW.

- A. Admissibility of electronic transactions
- B. Data protection, privacy, commercial confidentiality
- C. Data sharing between government agencies
- D. Financial issues



## E. Establishment of the NSW and NSW entity

We have analyzed the current legal landscape of Thailand looking for the issues which either enable or constitute an impediment to the implementation of the TNSW.

The analysis of the laws is organized according to the themes above in the sections below.

The following diagram summarizes the steps we have taken to reach the conclusions and recommendations outlined at *Section 9.6* below **Error! Reference source not found.**

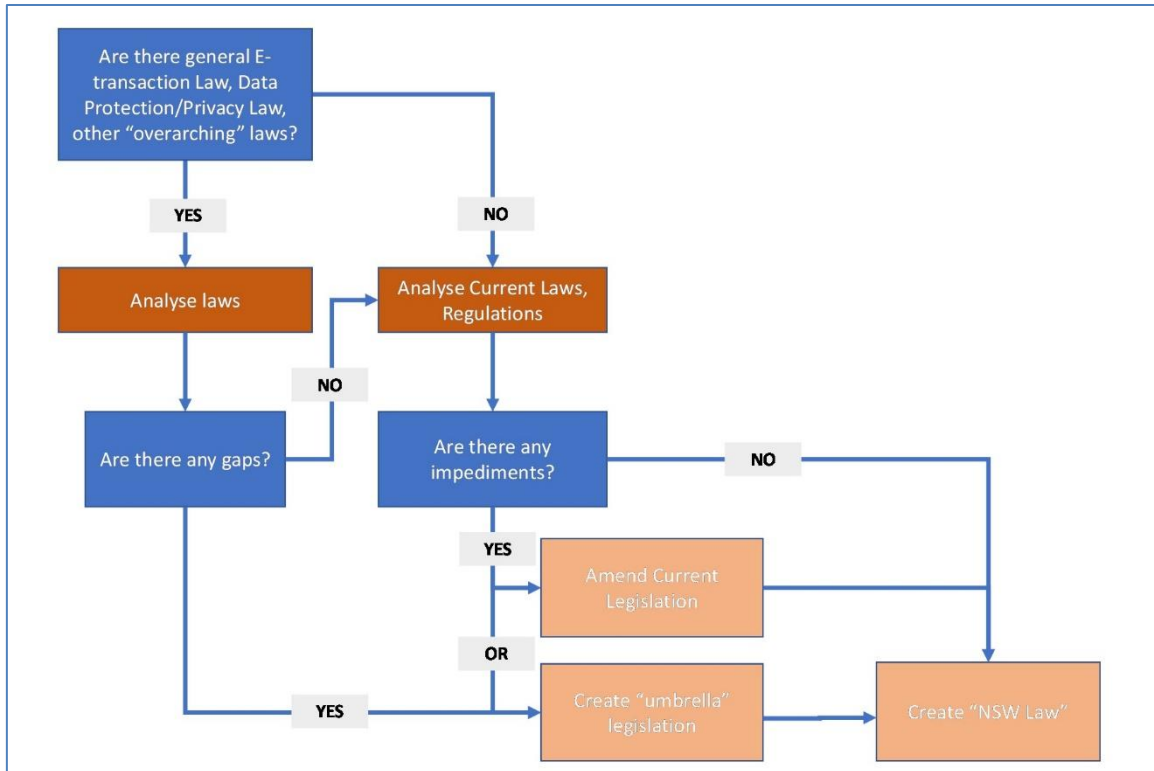


Figure 6: Process of analysis of the legislation

The first pass was to establish whether any “overarching” laws exist in Thailand which provide clauses that override or give specific meaning to words or clauses in other existing laws. For example, a typical ‘electronic transactions’ law (or “e-transactions law”) would stipulate that whenever a law mentions the word “document” this can be interpreted to also mean an “electronic data record”. The purpose of this type of “overarching” or “umbrella” clause is to avoid having to modify many existing laws and all their implementing regulations.

With regard to the TNSW, it is therefore advantageous if the fundamental issues above could be addressed by one or more such overarching laws.

Any gaps in these fundamental principles would probably be best addressed by creating “overarching” legislation rather than painstakingly modifying all the laws and regulations affected. This can be done either by creating any missing overarching laws or by incorporating the missing provisions in the legal instruments of establishment of the TNSW (see below for recommendations).

As a second step, we carried out a selective analysis of all the existing laws and regulations that govern the role of the various GAs participating in the TNSW in respect of their regulatory functions for imports, exports and transits. The purpose of this exercise was to ensure that, notwithstanding any overarching laws, nothing in the existing laws and regulations constitutes an impediment to the implementation of aspects of the TNSW.

The final step was to analyze the existing legal basis that gives legitimacy to the establishment and operation of the TNSW giving consideration as to whether a more appropriate legal instrument would be desirable and what the scope of this instrument should be.

## 9.2 Analysis of Fundamental Thai NSW Legal Issues

This section analyses the current status of legislation in Thailand with regard to the fundamental issues of legislation that underpin the TNSW. The objective is to establish whether these issues can be provided through existing 'overarching' or 'umbrella' legislation, i.e. legislation which overrides all other laws, current and future, by allowing specific meaning to be applied wherever certain wording occurs. The TNSW needs to operate in compliance with many different laws (e.g. Customs Law, Agriculture Law, Health Law, Transport Law, Industrial Production Law, Investment Law, etc.). It would therefore be very difficult, in the absence of an overarching law for specific issues of concern to the TNSW, if all these laws had to be amended individually, especially as each law may spawn several implementing regulations, all of which may also need to be amended.

The key fundamental issue for the TNSW are listed and analysed below.

### 9.2.1 Electronic Transactions

#### ***Analysis***

#### **The Electronic Transactions Act B.E. 2544 (2001), as amended and the Electronic Performance of Administrative Functions Act 2022**

The Electronic Transactions Act of 2001 (ETA) came into force on April 3, 2002 (120 days from its publication in the Thai Royal Gazette) and is fundamental to the operation of the TNSW.

The ETA gives legitimacy to electronic transactions thus enabling data to be exchanged in electronic format between traders and GAs and between the GAs themselves without the need for physical paper documents, handwritten signatures or stamps, thus underpinning the Functional Model of the TNSW.

Specifically, the ETA was enacted to promote the use of electronic transactions, ensure their legal validity and enforceability, and provide a framework for electronic signatures and electronic evidence.

The ETA defines electronic transactions as transactions conducted through electronic means, including computer systems, networks, and other electronic devices. It recognizes electronic signatures as having the same legal validity as handwritten signatures, and provides for the admissibility of electronic evidence in Thai courts.

The ETA also established the Electronic Transactions Commission (ETC), responsible for advising the Thai government on policies related to electronic transactions, and for overseeing the implementation of the ETA. Pursuant to the Electronic Transactions Development Agency Act B.E. 2562 (2019), the Electronic Transactions Development Agency (ETDA) was established to promote the development of electronic transactions and e-commerce in Thailand. The ETDA is responsible for developing and implementing policies, standards, and procedures for electronic transactions and e-commerce, as well as promoting public awareness and understanding of these technologies. Furthermore, the ETDA is also responsible for the administrative work of the ETC.

The Electronic Performance of Administrative Functions Act of 2022 (EPA) came into force on January 10, 2023 (90 days from its publication on the Thai Royal Gazette), and in conjunction with the ETA is fundamental to the operation of the TNSW. The EPA applies to the Thai government, and supersedes Chapter 4 of the ETA, related to the electronic performance of administrative functions. The EPA specifically regulates, among other things, the application with, the registration with, the submission of requests to, and issuances of licenses by governmental agencies and organizations.

The EPA was enacted to ensure that the Thai Government's administrative functions and public services utilize suitable technology, recognizing that current applicable laws were not as supportive of the usage of

electronic methods in licensing, providing public services, or welfare benefits to the people. Such lack of technology caused the general public to bear the burden and costs of interacting with the government sector, thus necessitating the EPA.

The EPA also provides for the specification of electronic methods, including information and communication technology standards that state agencies must use and implement in a consistent and connected fashion.

Together, the ETA and the EPA function as the main set of umbrella legislation for conducting government business electronically.

The following clauses in the ETA and EPA are relevant and apply to each matter individually as follows.

**a) Equivalence and admissibility of electronic documents, signatures, stamps.**

• **ETA**

Electronic Documents

Section 7 of the ETA states that “Information shall not be denied legal effect and enforceability solely on the ground that it is in the form of a data message.”

This means that electronic documents are equivalent to paper-based documents and have the same legal validity.

Electronic Signatures

Section 9 of the ETA states that “In the case where a person is to enter a signature in any writing, it shall be deemed that a data message in question bears a signature if:

- (1) A method is used which is capable of identifying the signatory and indicating that the signatory has approved the information contained in the data message as being his own; and
- (2) The method used is of either of the following means:
  - (a) Such method is as reliable as was appropriate for the purpose for which the data message was generated or sent, having regard to surrounding circumstances or an agreement between the parties; or
  - (b) Such method is capable of identifying the signatory and indicating the signatory’s intention under (1), by itself or together with further evidence.

In determining a reliable method under paragraph one (2)(a), regard shall be had to:

- (1) the security and strictness of the use of methods or equipment in the identification of persons, the availability of alternative methods of identification of persons, signature requirements set forth in the law, the security level of the use of the electronic signature, the compliance with authentication procedures set forth by intermediaries, the degree of acceptance or non-acceptance of the method of identification of persons in making transactions and the method of identification of persons at the time of making the transaction and the communication;
- (2) the nature, kind and size of the transaction made, the number of occasions on which or the frequency at which transactions take place, trade customs or practice and the importance and the value of the transaction made; or
- (3) the strictness of communication systems.”

This means that electronic signatures are recognized as having the same legal validity as handwritten signatures.

Electronic Stamps/Seals

Section 9 of the ETA continues on to state that “The provisions of paragraph one shall apply *mutatis mutandis* to the affixing of seals of juristic persons by an electronic means.”

This means that electronic stamps and seals are recognized as having the same legal validity as physical stamps and seals, and any changes required due to the use of electronic means will be taken into account.

- **EPA**

Parallel to the ETA, the EPA reinforces the validity and applicability of electronic documents, signatures, seals, and messages for the administration of state affairs and the provision of government services.

Section 7 of the EPA states that “Any matters required by laws to obtain a license by applying to a licenser, a license applicant may submit such application, document or evidence, or copies of document or evidence via electronic method, and it shall be deemed lawfully submitted by the relevant laws. Relevant state officials cannot reject such applications solely on the ground that it has been submitted electronically. Copies of documents or evidence submitted via electronic method need not be physically signed in order to certify.”

Section 7 paragraph 3 of the EPA specifically states that “In case the laws under paragraph one or their subordinated regulations stipulate that submission of application for license must be carried out according to specified form, means, and conditions; electronic submission of such application for license with the same statements specified the relevant form shall be deemed lawfully submitted by the relevant laws.”

This means that for any government regulations or functions that could require a non-electronic form or method of application, such as in paper or in writing, electronic submission of such applications are deemed valid.

**b) Definition of Electronic Transaction in the context of e-Government.**

- **ETA**

Section 4 of the ETA states that “‘electronic transaction’ means a transaction in which an electronic means is used in whole or in part;”

- **EPA**

The EPA does not contain any specific definition of the term “Electronic Transactions.” However, the general premise of the EPA is that the government must be able to provide services related to obtaining licenses<sup>24</sup> with electronic submission and acceptance of documents, and that such electronic documents are valid.

**c) Incorporation by reference**

- **ETA**

Section 8 of the ETA (as amended by the Electronic Transactions Act (No. 3) B.E. 2562 (2019)) states that “Subject to the Provisions of Section 9, in the case where the law requires that any transaction be made in writing, evidenced by writing or supported by a document, or provides legal consequences for the

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<sup>24</sup> Please note that Section 5 of the EPA defines “License” as: “‘License’ includes issuance of license, issuance of permission, registration, receiving information, receiving notification, issuance of concession, approval, assent, providing opinion, informing result of consideration, informing result of proceedings, making payment, providing welfare benefit, and providing other services for the general public or state agencies.”

absence of a writing, written evidence or a supporting document, if the information is generated in the form of a data message which is accessible and usable for subsequent reference without its meaning being altered, it shall be deemed that such information is made in writing, evidenced by writing or supported by the document as required by law.”

This means that documents incorporated by reference (“supported by a document which must be produced”) that are electronically accessible and useable, are valid as if made in writing.

- **EPA**

The EPA does not contain any specific provisions regarding incorporation by reference, as that is covered by the ETA.

**d) Scope of the Law (what is covered and what is excluded)**

- **ETA**

Section 3 of the ETA states that “This Act shall apply to civil and commercial transactions made by the use of data messages” except the transactions prescribed by a Royal Decree as being exempted from the application of this Act in whole or in part.

The provisions of paragraph one have no prejudice to any law or by-law enacted for consumer protection.”

Section 3 states the exclusions of the ETA as “except the transactions prescribed by a Royal Decree as being exempted from the application of this Act in whole or in part.” Such exemptions prescribed by Royal Decree are matters related to Family law and Inheritance Law under the Thai Civil and Commercial Code (pursuant to the Royal Decree Prescribing Civil and Commercial Electronic Transactions Excluded From the Application of the Law on Electronic Transactions B.E. 2549 (2006)).

This means that as is the process for Royal Decrees, a Minister of the relevant Ministry or GA looking for an exemption under the ETA could propose such exemptions to the Cabinet, who must then approve and advise the Thai King on issuing a Royal Decree for the exemption. Although the process can be arduous, exemptions can and have been made through such methods, such as for matters related to Family law and Inheritance law as listed above. To the extent that the Mission has been able to ascertain, no exemptions have been requested by GAs or promulgated by Cabinet in connection with the TNSW.

Furthermore, any subsequent consumer protection laws would not conflict with the ETA.

- **EPA**

Section 4 states that the EPA “shall apply to all state agencies which are not in the legislative branch, judiciary branch, independent constitutional organisation, public prosecutors organisation, and other state agencies as specified in the Ministerial Regulation”. Please note, however, that such Ministerial Regulations have not yet been promulgated, as the EPA is relatively new law.

The Royal Decree may specify that this Act shall apply to state agencies as a whole, or only to parts of the state agency, or only to some aspects of their works. Please note, however, that such Royal Decrees have not yet been promulgated, as the EPA is relatively new law.

Section 7 states that the EPA also applies to “Any matters required by laws to obtain a license by applying to a licensor” and further states that the EPA applies to “laws under paragraph one (written above) or their subordinated regulations.... the submission of writings, report, document, or data, as well as payment of license application, fees, taxes, fines, or other kind of payment to government agencies or state agencies, *mutatis mutandis*.”

Section 7 states the exclusions of the EPA as “This Section shall not apply to registrations for which an applicant must proceed personally ranging from marriage, divorce, to child adoption; as well as application for identification card, passport, or other matters specified in the Ministerial Regulation. As

an exception, in case the laws relating to matters abovementioned stipulate that an applicant proceed via electronic method, an applicant shall comply with such laws.” Such exceptions prescribed by Section 7 are for matters which may require personal examination by an officer of the government, except where the relevant GA’s rules allow for electronic means.

Section 15 of the EPA states that “In case any state agencies cannot adopt to use electronic method, the exemption can be made by issuance of the Royal Decree to a specific case, while having to state reasons, necessities, and the time period for such exemption.”

This means that similarly to the ETA, a Minister of the relevant Ministry or GA looking for an exemption under the EPA could propose such exemptions to the Cabinet, who must then approve and advise the Thai King on issuing a Royal Decree for the exemption. However, the exemption provision of the EPA specifically lists out additional information that must be provided in respect to such an exemption.

**e) Determining the source and attribution of data messages**

- **ETA**

The ETA does not have any specific provisions regarding the determination of the source and attribution of data messages. However, Section 12 of the ETA regarding the retention of documents or information contains similar references, stating that for documents or information to be retained properly, the “the information, if any, which enables the identification of the origin, source and destination of such data message including the date and time when it was sent or received” must be retained.

Thus, although there are no specifically relevant provisions in the ETA, there could be determinations made as to noting the origin and source of the information.

- **EPA**

The EPA does not have any specific provisions regarding the determination of the source and attribution of data messages.

**f) Determining location, date and time of when a data message is created**

- **ETA**

The ETA does not have any specific provisions regarding the determination of location, date, or time of when a data message is created. However, Section 12 of the ETA regarding the retention of documents or information contains similar references, stating that for documents or information to be retained properly, the “the information, if any, which enables the identification of the origin, source and destination of such data message including the date and time when it was sent or received” must be retained.

Thus, although there are no specifically relevant provisions in the ETA, there could be determinations made as to noting the origin and source of the information, and that the date/time of data messages could either be when it was sent, or received.

- **EPA**

Section 10 of the EPA states that “Any applications or contacts in which the general public make or submit to the relevant state agencies or state officials via electronic channel announced by state agencies, shall be deemed that such state agencies or state officials receives the application or contact by the time and date when such application or contact enters into electronic system of state agencies or state officials. In case that such application or contact enters into the electronic system by the time and date that is out of working hours of the state agencies, it shall be deemed that the state agencies or state officials receive such application nor contact on the following working day.”

**g) Using electronic documents as evidence**

- **ETA**

Section 11 of the ETA states that “The admissibility of data message in evidence shall not be denied in legal proceedings, whether in a civil action, a criminal action or any other action, on the sole ground that it is a data message.

In assessing the evidential weight of data message so as to conclude whether and to what extent it is reliable, regard shall be had to the reliability of the manner in which or the method by which the data message was generated, stored or communicated, the manner in which or the method by which the integrity of the information was maintained, and the manner in which or the method by which its originator was identified or indicated and also to all relevant circumstances.

The provisions of paragraph one shall also apply to a printout of a data message.”

This means that the ETA provides for the admissibility of electronic evidence in court. Electronic evidence is considered to be admissible if it is properly authenticated and the authenticity of the evidence can be verified. This means that electronic documents, signatures, and stamps can be used as evidence in legal proceedings, and will be given the same weight as paper-based evidence.

- **EPA**

Section 7 of the EPA states that “document or evidence” submitted “via electronic method” shall be deemed lawfully submitted by the relevant laws, and that “Relevant state officials cannot reject such application solely on the ground that it has been submitted electronically. Furthermore, Section 7 further states that “Copies of document or evidence submitted via electronic method need not be physically signed in order to certify.”

Section 15 of the EPA states that “In making contacts or submitting matters among state agencies, between state officials and state agencies, between the general public and state agencies, or between the general public and competent state officials; if it has been conducted via electronic method, it shall be deemed to be lawful and can be used as evidence under any law. In case any state agencies cannot adopt to use electronic method, the exemption can be made by issuance of the Royal Decree to a specific case, while having to state reasons, necessities, and the time period for such exemption.

It shall be a duty of Department of Comptroller General, state agencies having duties to permit or inspect the public disbursement and the public spending, state agencies having duties to inspect the validity of state officials’ operations to expediently amend laws, regulations, rules, prescriptions, and resolutions impeding the implementation of paragraph one.

During the absence of amendments of laws, regulations, rules, prescriptions, and resolutions under paragraph two, no person can deny the existence or accuracy of documents or evidence under paragraph one solely on the ground that it has been made via electronic method.”

#### **h) Originals, i.e. when to treat an electronic document as an original**

- **ETA**

Section 10 of the ETA states that “In the case where the law requires that any information be presented or retained in its original form as an original document, if the presentation or retention is made in the form of a data message in accordance with the following rules, it shall be deemed as the presentation or retention of the original document under the law:

- (1) a reliable method is used with that data message for assuring the integrity of the information from the time when it was generated in its final form; and
- (2) the information is capable of being subsequently displayed.

The consideration of the integrity of the information under (1) shall be made by having regard to its completeness and absence of alteration, apart from any additional endorsement or recordation or any change which may arise in the normal course of communication, storage or display of the information, which does not affect the integrity of that information.

In determining the reliability of the method used for assuring the integrity of the information under (1), regard shall be had to all the relevant circumstances, including the purposes for which the information was generated.

In the case of a printout of the data message under paragraph one for the purpose of reference of the information contained therein, if such printout contains complete information corresponding to that data message and certified by such competent agency as designated, by Notification, by the Commission, it shall be deemed that such printout is equivalent to the original."

- **EPA**

The EPA does not have any specific provisions as to what documents are considered specifically "original" as that is covered by the ETA.

**i) Electronic Copies of Documents**

- **ETA**

The ETA does not contain any specific provisions regarding references to "electronic copies" of documents.

- **EPA**

Section 7 of the EPA states that "Copies of documents or evidence submitted via electronic method need not be physically signed in order to certify."

Section 7 of the EPA further states that "In case such laws and their subordinated regulations stipulate that a license applicant must submit or sent more than one set of copy, such electronic submission shall be deemed all set are completely submitted."

Section 12 of the EPA states that "Subject to Section 7, if it is necessary, during the process of licensing consideration, for a licensor or state agencies to have copies of any document or evidence issued to a license applicant by any state agencies, once a license applicant brings originals of document or evidence for showing to a licensor or state agencies, it shall be a duty of such state agencies to make copies and certify the documentation without any fees or expenses. The duty to make copies of document or evidence cannot be claimed as a cause for delay in the process of license consideration."

**j) Storage and retention of electronic data documents**

- **ETA**

As mentioned previously, Section 10 of the ETA states that "In the case where the law requires that any information be presented or retained in its original form as an original document, if the presentation or retention is made in the form of a data message in accordance with the following rules, it shall be deemed as the presentation or retention of the original document under the law:

(3) a reliable method is used with that data message for assuring the integrity of the information from the time when it was generated in its final form; and

(4) the information is capable of being subsequently displayed.

The consideration of the integrity of the information under (1) shall be made by having regard to its completeness and absence of alteration, apart from any additional endorsement or recordation or any change which may arise in the normal course of communication, storage or display of the information, which does not affect the integrity of that information.

In determining the reliability of the method used for assuring the integrity of the information under (1), regard shall be had to all the relevant circumstances, including the purposes for which the information was generated.



In the case of a printout of the data message under paragraph one for the purpose of reference of the information contained therein, if such printout contains complete information corresponding to that data message and certified by such competent agency as designated, by Notification, by the Commission, it shall be deemed that such printout is equivalent to the original.”

Section 12 of the ETA states that “Subject to the provisions of Section 10, in the case where the law requires that any document or information be retained, if the retention is made in the form of a data message in accordance with the following rules, it shall be deemed as the retention of the document or information as required by the law:

- (1) such data message is accessible and usable for subsequent reference without its meaning being altered;
- (2) such data message is retained in the format in which it was generated, sent or received or in a format which can display accurately the information generated, sent or received; and
- (3) the information, if any, which enables the identification of the origin, source and destination of such data message including the date and time when it was sent or received is retained.

The provisions of paragraph one shall not apply to the information the sole purpose of which is to enable the data message to be sent or received.

The State agency responsible for the retention of any document or information may prescribe supplemental details with regard to the retention of such document or information insofar as they are not contrary to or inconsistent with the provisions of this section.”

Furthermore, Section 12/1 of the ETA states that “The provisions of section 10, Section 11, and Section 12 shall also apply *mutatis mutandis* to a document or information subsequently prepared or transformed into the form of a data message by an electronic means and to the retention of such document or information.”

- **EPA**

Section 17 of the EPA states that “Any information which state agencies shall store pursuant to the law on official information, or any documents in possession of state agencies which shall be stored pursuant to laws, regulations, rules, prescriptions, and resolutions of the Council of Ministers; if such information or document is not in an electronic form, the Council of Ministers may issue a resolution specifying state agencies to store it in an electronic form instead of document, and to submit the originals to Department of Fine Arts to further proceed according to the law on national archives.

Method of storage and electronic form under paragraph one shall be consistent with the standard specified by the Council of Ministers under Section 6.”

Section 6 of the EPA states that “For efficient implementation of this Act, the Council of Ministers shall specify electronic method of including information and communication technology standards which state agencies must use and implement consistently, connectedly, safely, and accessibly by general public.”

**k) Substitute for use of a seal when the Law requires it**

- **ETA**

As mentioned previously, Section 9 of the ETA states that “The provisions of paragraph one shall apply *mutatis mutandis* to the affixing of seals of juristic persons by an electronic means.”

This means that electronic stamps and seals are recognized as having the same legal validity as physical stamps and seals, but with any changes required due to the use of electronic means will be taken into account.

- **EPA**

In support of the ETA, the general premise of the EPA is that the government must be able to provide services related to obtaining licenses with electronic submission and acceptance of documents, and that such electronic documents are valid.

#### **l) Electronic signatures**

- **ETA**

The ETA has no specific provisions distinguishing electronic vs. digital signatures.

The ETA has no specific provisions distinguishing “basic” and “secure” signatures.

However, as mentioned previously, Section 26 of the ETA outlines the requirements of a “reliable electronic signature,” stating that “An electronic signature that meetings the following features shall be deemed to be a reliable electronic signature:

- (1) The signature creation data are, within the context in which they are used, linked to the signatory and no other person;
- (2) The signature creation data were, at the time of creating the electronic signature, under the control of the signatory and of no other person;
- (3) Any alteration to the electronic signature, made as from the time of its creation, is detectable; and
- (4) In the case where a purpose of the legal requirement for an electronic signature is to provide assurance as to the integrity of the information, any alteration made to that information as from the time of signing is detectable.

The provisions of paragraph one does not imply any limitation that no other method exists for establishing the reliability of an electronic signature or does not limit the adducing of any evidence of the non-reliability of an electronic signature.”

- **EPA**

The EPA has no specific provisions distinguishing electronic vs. digital signatures.

The EPA has no specific provisions distinguishing “basic” and “secure” signatures.

#### **m) When to use digital signatures, recognition, digital signature certificates, etc.**

- **ETA**

Beyond what was previously mentioned for the validity of digital signatures, the ETA has no specific provisions regarding “when” to use digital signatures, except that use of digital signatures must be in accordance with the ETA (i.e. when allowed by the relevant GAs and doesn’t fall within any of the listed exemptions of the ETA).

- **EPA**

As with the ETA, the EPA has no specific provisions regarding “when” to use digital signatures, and the validity of digital signatures is covered by the ETA. However, the EPA is specifically applicable to any matters required by law to obtain licenses from relevant GAs.

#### **n) Electronic transactions used by State organizations**

- **ETA**

The use of Electronic Transactions by state organizations governed by the EPA, as Chapter 4 of the ETA is superseded by the EPA.

- **EPA**

As mentioned previously, the EPA generally governs the electronic performance of administrative functions by the Thai government. The EPA specifically regulates the application and issuance of licenses by governmental organizations. As such, all of its provisions are relevant to electronic transactions used by State organizations.

### **Conclusions**

**In conjunction, the Electronic Transaction Act of 2001 and the Electronic Performance of Administrative Functions Act of 2022 provide the fundamental authorities and legislative platform necessary for the validity, submission, and acceptance of electronic documents, signatures, and stamps in electronic transactions and all that they entail, including those involving state organizations and government entities.**

### **9.2.2 Data privacy, confidentiality, data protection**

#### **Analysis**

##### **Personal Data Protection Act B.E. 2562 (2019)**

The Personal Data Protection Act of 2019 (PDPA) came into force on 1 June 2022 and is fundamental to the operation of the TNSW.

The PDPA concerns the rights of citizens to have personal data supplied to a government authority treated in confidence, and used only for the purpose stated and agreed to by the user.

In the context of the TNSW, this would apply to the personal data of a person or company that registers to use the TNSW, where, they may be requested to supply information such as names, addresses of offices, telephone numbers, email addresses, details of turnover, etc. and, on an ongoing basis, transactional information regarding their business which is highly confidential.

It should be noted that, in the context of the TNSW, protection needs to be extended to the confidential commercial data which is contained in the data messages. This relates to the names of a company's trading partners (e.g. shipper, consignee, manufacturer, carrier, etc.), type of goods, their prices, volumes, and, generally, any information that would be valuable to competitors. Currently the PDPA does not cover such information and there are no specific laws in Thailand governing the protection of commercial data. However, protection is afforded, to some extent, by the Thai Civil and Commercial Code (TCCC), the Thai Criminal Code (TCC), and any ancillary legislation (such as the Computer-Related Crime Act B.E. 2550 (2007), which relates to "computer data" in general, which may include personal and commercial data. Pursuant to these laws, any abuse of commercial data would classify under the general principles of Thai tort law (abuse of the commercial data causing damage).

The PDPA established the Personal Data Protection Committee (PDPC), which is responsible for drafting and issuing sub-regulations under the PDPA. As such, the PDPC is empowered to:

- (a) identify strategies or methods for handling personal data protection to maintain compliance with the PDPA;
- (b) advance and endorse the safeguarding of personal data;
- (c) issue notifications or orders pursuant to the PDPA; and
- (d) announce and set regulations/guidelines for personal data Controllers and Processors to observe and adhere to.

In accordance with the PDPA, the data controller (including GAs) must have a lawful basis for collecting, using, and disclosing (collectively referred to as "process" or "processing") the Personal Data specified below (including personal data belonging to users of the TNSW system). The lawful basis for processing Personal

Data is specified in Section 24 of the PDPA. Sensitive Data is specified in Section 24 of the PDPA. The GAs collecting processing Personal Data from the data subjects may rely on acting in the public interest and fulfilling legal obligations in order to transfer personal data to other GAs.

It is important to note that cases where the GA may process the Sensitive Data specified below (e.g. religious affiliation or health data, including blood group, as identified on certain Thai national identification cards), GAs are required to obtain consent from the data subject. Such consent can be revoked at any time, and such revocations must be easier or at least as easy as providing the consent. To prevent ensuing impediments from such revocations, GAs may consider not processing such sensitive data.

The following clauses in the PDPA are relevant.

**a) Scope of the Law (what is covered and what is excluded)**

The PDPA applies to any person, juristic person, or legal entity that collects, uses, or discloses the personal data of a natural (and living) person, with certain exceptions (e.g. exceptions for household activities described below in Section 4). The PDPA covers the collection, use, disclosure, and/or transfer of personal data, with the aforementioned exceptions.

Section 3 of the PDPA states that “In the event that there is any sector-specific law governing the protection of Personal Data in any manner, any business or any entity, the provisions of such law shall apply except:

- (1) For the provisions with respect to the collection, use, or disclosure of Personal Data and the provisions with respect to the rights of data subjects including relevant penalties, the provisions of this Act shall apply additionally, regardless of whether they are repetitious with the above specified law;
- (2) For the provisions with respect to complaints, provisions granting power to the expert committee to issue an order to protect the data subject, and provisions with respect to the power and duties of the Competent Official, including relevant penalties, the provisions of this Act shall apply in the following circumstances:
  - (a) in the event that such law has no provision with respect to complaints;
  - (b) in the event in the event that such law has the provisions giving the power to the competent official, who has the power to consider the complaints under such law, to issue an order to protect the data subject, but such power is not equal to the power of the expert committee under this Act; and either the competent official who has power under such law makes a request to the expert committee, or data subject files a complaint with the expert committee under this Act, as the case may be.”

**Exclusions**

Section 4 of the PDPA states that “This Act shall not apply to:

- (1) the collection, use, or disclosure of Personal Data by a Person who collects such Personal Data for personal benefit or household activity of such Person only;
- (2) operations of public authorities having the duties to maintain state security, including financial security of the state or public safety, including the duties with respect to the prevention and suppression of money laundering, forensic science or cybersecurity;
- (3) a Person or a juristic person who uses or discloses Personal Data that is collected only for the activities of mass media, fine arts, or literature, which are only in accordance with professional ethics or for public interest;
- (4) The House of Representatives, the Senate, and the Parliament, including the committee appointed by the House of Representatives, the Senate, or the Parliament, which collect, use or disclose Personal Data in their consideration under the duties and power of the House of Representatives, the Senate, the Parliament or their committee, as the case may be;

- (5) trial and adjudication of courts and work operations of officers in legal proceedings, legal execution, and deposit of property, including work operations in accordance with the criminal justice procedure;
- (6) operations of data undertaken by a credit bureau company and its members, according to the law governing the operations of a credit bureau business.

The exceptions to apply all or parts of the provisions of this Act to any Data Controller in any manner, business or entity, in a similar manner to the Data Controller in paragraph one, or for any other public interest purpose, shall be promulgated in the form of the Royal Decree.

The Data Controller under paragraph one (2), (3), (4), (5), and (6) and the Data Controller of the entities that are exempted under the Royal Decree in accordance with paragraph two shall also put in place a security protection of Personal Data in accordance with the standard.”

### **Jurisdiction**

Section 5 of the PDPA states that “This Act applies to the collection, use, or disclosure of Personal Data by a Data Controller or a Data Processor that is in the Kingdom of Thailand, regardless of whether such collection, use, or disclosure takes place in the Kingdom of Thailand or not.

In the event that a Data Controller or a Data Processor is outside the Kingdom of Thailand, this Act shall apply to the collection, use, or disclosure of Personal Data of data subjects who are in the Kingdom of Thailand, where the activities of such Data Controller or Data Processor are the following activities:

- (1) the offering of goods or services to the data subjects who are in the Kingdom of Thailand, irrespective of whether the payment is made by the data subject;
- (2) the monitoring of the data subject’s behavior, where the behavior takes place in the Kingdom of Thailand.”

### **b) General Provisions Definitions**

- “**Personal Data**” means any information relating to a Person, which enables the identification of such Person, whether directly or indirectly, but not including the information of the deceased Persons in particular;
- “**Sensitive Data**” means any Personal Data revealing racial, ethnic origin, political opinions, cult, religious or philosophical beliefs, sexual behavior, criminal records, health data, disability, trade union information, genetic data, biometric data of a person, and any data which may affect the data subject in the same manner, as prescribed by the Committee;

“**Data Controller**” means a Person or a juristic person having the power and duties to make decisions regarding the collection, use, or disclosure of the Personal Data;

“**Data Processor**” means a Person or a juristic person who operates in relation to the collection, use, or disclosure of the Personal Data pursuant to the orders given by or on behalf of a Data Controller, whereby such Person or juristic person is not;

“**Committee**” means the Personal Data Protection Committee;

“**Office**” means the Office of the Personal Data Protection Committee.

### **c) Treatment of data**

#### **Lawful Basis for processing personal data**

Section 24 of the PDPA states that “The Data Controller shall not collect Personal Data without the consent of the data subject, unless:

- (1) it is for the achievement of the purpose relating to the preparation of the historical documents or the archives for public interest, or for the purpose relating to research or statistics, in which the suitable measures to safeguard the data subject's rights and freedoms are put in place and in accordance with the notification as prescribed by the Committee;

- (2) it is for preventing or suppressing a danger to a Person's life, body or health;
- (3) it is necessary for the performance of a contract to which the data subject is a party, or in order to take steps at the request of the data subject prior to entering into a contract;
- (4) it is necessary for the performance of a task carried out in the public interest by the Data Controller, or it is necessary for the exercising of official authority vested in the Data Controller;
- (5) it is necessary for legitimate interests of the Data Controller or any other Persons or juristic persons other than the Data Controller, except where such interests are overridden by the fundamental rights of the data subject of his or her Personal Data;
- (6) it is necessary for compliance with a law to which the Data Controller is subjected.”

Section 26 of the PDPA states that “Any collection of Personal Data pertaining to racial, ethnic origin, political opinions, cult, religious or philosophical beliefs, sexual behaviour, criminal records, health data, disability, trade union information, genetic data, biometric data, or of any data which may affect the data subject in the same manner, as prescribed by the Committee, is prohibited, without the explicit consent from the data subject, except where:

- (1) it is to prevent or suppress a danger to life, body or health of the Person, where the data subject is incapable of giving consent by whatever reason;
- (2) it is carried out in the course of legitimate activities with appropriate safeguards by the foundations, associations or any other not-for-profit bodies with a political, religious, philosophical, or trade union purposes for their members, former members of the bodies, or persons having regular contact with such foundations, associations or not-for-profit bodies in connection with their purposes, without disclosing the Personal Data outside of such foundations, associations or not-for-profit bodies;
- (3) it is information that is disclosed to the public with the explicit consent of the data subject;
- (4) it is necessary for the establishment, compliance, exercise or defense of legal claims;
- (5) it is necessary for compliance with a law to achieve the purposes with respect to:
  - a. preventive medicine or occupational medicine, the assessment of working capacity of the employee, medical diagnosis, the provision of health or social care, medical treatment, the management of health or social care systems and services. In the event that it is not for compliance with the law, and such Personal Data is under the responsibility of the occupational or profession practitioner or person having the duty to keep such Personal Data as confidential under the law, it must be for compliance with the contract between the data subject and the medical practitioner;
  - b. public interest in public health, such as protecting against cross-border dangerous contagious disease or epidemics which may be contagious or pestilent, or ensuring standards or quality of medicines, medicinal products or medical devices, on the basis that there is a provision of suitable and specific measures to safeguard the rights and freedom of the data subject, in particular maintaining the confidentiality of Personal Data in accordance with the duties or professional ethics;
  - c. employment protection, social security, national health security, social health welfare of the entitled person by law, the road accident victims protection, or social protection in which the collection of Personal Data is necessary for exercising the rights or carrying out the obligations of the Data Controller or the data subject, by providing the suitable measures to protect the fundamental rights and interest of the data subject;
  - d. it is for the scientific, historical, or statistic research purposes, or other public interests which must be carried out only to the extent necessary to achieve such purposes, and the suitable measures have been provided to protect the fundamental rights and interest of the data subject as prescribed by the Committee;

- e. the substantial public interest, by providing the suitable measures to protect the fundamental rights and interest of the data subject.

The biometric data in paragraph one shall mean the Personal Data arising from the use of technics or technology related to the physical or behavioural dominance of Person, which can be used to identify such Person apart from other Persons, such as the facial recognition data, iris recognition data or fingerprint recognition data.

In the case of the collection of the Personal Data relating to criminal record, such collection shall be carried out under the control of authorized official authority under the law, or the data protection measure has been implemented according to rules prescribed by the Committee.”

### **Consent**

Section 19 of the PDPA states that “The Data Controller shall not collect, use, or disclose Personal Data, unless the data subject has given consent prior to or at the time of such collection, use, or disclosure, except the case where it is permitted to do so by the provisions of PDPA or any other laws.

A request for consent shall be explicitly made in a written statement, or via electronic means, unless it cannot be done by its nature.

In requesting consent from the data subject, the Personal Data Controller shall also inform the purpose of the collection, use, or disclosure of the Personal Data. Such request for consent shall be presented in a manner which is clearly distinguishable from the other matters, in an easily accessible and intelligible form and statements, using clear and plain language, and does not deceptive or misleading to the data subject in respect to such purpose. In this regard, the Committee may require the Data Controller to request for data subject's consent in accordance with the form and statements as prescribed by the Committee.

In requesting consent from the data subject, the Data Controller shall utmost take into account that the data subject's consent is freely given. Also, the entering into the contract, including any provisions of the service shall not be a condition to obtaining consent for the collection, use, or disclosure of Personal Data that is not necessary or not related to such contract entering, including the provisions of the service.

The data subject may withdraw his or her consent at any time. The withdrawal of consent shall be as easy as to giving consent, unless there is a restriction of the withdrawal of consent by law, or the contract which gives benefits to the data subject. However, the withdrawal of consent shall not affect the collection, use, or disclosure of personal data that the data subject has already given consent legally under this Chapter.

In the event that the withdrawal of consent will affect the data subject in any manner, the Data Controller shall inform the data subject of such consequences of consent's withdrawal.

The request for the data subject’s consent which is not in accordance with those prescribed in this Chapter shall have no binding effect on the data subject and shall no longer enable the Data Controller to collect, use, or disclose the Personal Data.”

### **Notification of personal data processing**

Section 23 of the PDPA states that “In collecting the Personal Data, the Data Controller shall inform the data subject, prior to or at the time of such collection, of the following details, except the case where the data subject already knows of such details:

- (1) the purpose of the collection for use or disclosure of the Personal Data, including the purpose which is permitted under section 24 for the collection of Personal Data without the data subject's consent;
- (2) notification of the case where the data subject must provide his or her Personal Data for compliance with a law, or contract, or where it is necessary to provide the Personal Data for the purpose of entering into the contract, including notification of the possible effect where the data subject does not provide such Personal Data;

- (3) the Personal Data to be collected and the period for which the Personal Data will be retained. If it is not possible to specify the retention period, the expected data retention period according the data retention standard shall be specified;
- (4) the categories of Persons or entities to whom the collected Personal Data may be disclosed;
- (5) information, address, and the contact channel details of the Data Controller, where applicable, of the Data Controller's representative or data protection officer;
- (6) the rights of the data subject under section 19 paragraph five, section 30 paragraph one, section 31 paragraph one, section 32 paragraph one, section 33 paragraph one, section 34 paragraph one, section 36 paragraph one, and section 73 paragraph one.

Section 21 of the PDPA states that “The Data Controller shall collect, use, or disclose Personal Data according to the purpose notified to the data subject prior to or at the time of such collection.

The collection, use, or disclosure of Personal Data shall not be conducted in a manner that is different from the purpose previously notified to the data subject in accordance with paragraph one, unless:

- (1) the data subject has been informed of such new purpose, and the consent is obtained prior to the time of collection, use, or disclosure;
- (2) it can be done by the provisions of PDPA or in other laws.”

Section 25 of the PDPA states that “The Data Controller shall not collect Personal Data from any other source, apart from the data subject directly, except where:

- (1) the Data Controller has informed the data subject of the collection of Personal Data from other source without delay, but shall not exceed thirty days upon the date of such collection, and has obtained the consent from the data subject;
- (2) it is a collection of Personal Data which falls within the exceptions to request consent under Section 24 or Section 26.

The provisions with respect to notice of the new purpose in Section 21, and the notice of information details in Section 23 shall apply *mutatis mutandis* to the collection of the Personal Data which requires consent in paragraph one, except for the following circumstances:

- (1) the data subject has been aware of such new purposes or details;
- (2) the Data Controller can prove that the notice of such new purposes or information details is impossible or will obstruct the use or disclosure of the Personal Data, in particular for achieving the purposes in relation to scientific, historical, or statistical research purposes. In such cases, the Data Controller shall take suitable measures to protect the data subject 's rights, freedoms and interests;
- (3) the use or disclosure of the Personal Data shall be carried out on an urgent basis as required by law, and suitable measures have been implemented to protect the data subject's interest;
- (4) the Data Controller is aware of or acquires such Personal Data from his or her duty or occupation or profession, and shall maintain new purposes or certain information details as prescribed in Section 23 with confidentiality as required by law.

To notify the information detailed in paragraph two, the Data Controller shall provide such information to the data subject within thirty days after the date of collection such of Personal Data, unless the Personal Data are to be used for communication with the data subject, the notice of information details shall be provided at the time of the first communication to that data subject. If a disclosure to another Person is envisaged, the notice of information details shall be provided prior to the time of the first disclosure.”

#### **d) Rights of the data subject**

Sections 30 - 42 of the PDPA outline the rights of the data subject, summarized into the following key points:



- (1) the personal data controller must inform the data subject of certain information (such as the purpose of collection and the retention period) prior to or at the time of collection, unless the data subject is already aware of such information.
- (2) the data subject has the right to access/request a copy of their personal data.
- (3) the data subject has the right to rectify incomplete, inaccurate, misleading, outdated personal data.
- (4) the data subject has the right to request the data controller to delete/de-identify their personal data, except when the data controller needs to retain such information out legal claims or obligations.
- (5) the data subject has the right to object to certain collection, use, and disclosure of their personal data (such as direct marketing).
- (6) the data subject has the right to obtain personal data in readable format that can be used or disclosed by automatic means, and can request the data controller to send or transfer such personal data to other data controllers, as well as directly obtain such information from other data controllers.
- (7) the data subject has the right to restrict use of their personal data in certain circumstances (in accordance with the provisions of the PDPA).
- (8) the data subject has the right to withdraw consent at any time.
- (9) the data subject has the right to lodge a complaint if they believe the collection, use, and disclosure of their personal data is or was unlawful or non-compliant with PDPA.

#### **e) Duties of the Data Controller**

Section 35 of the PDPA states that “The Data Controller shall ensure that the Personal Data remains accurate, up-to-date, complete, and not misleading.”

Section 36 of the PDPA states that “In the case where the data subject requests the Data Controller to act in compliance with Section 35, if the Data Controller does not take action regarding the request of the data subject, the Data Controller shall record such request of the data subject together with reasons, in the record as prescribed in Section 39.

The provisions of Section 34 paragraph two shall apply mutatis mutandis.”

Section 37 of the PDPA states that “The Data Controller shall have the following duties:

- (1) provide appropriate security measures for preventing the unauthorized or unlawful loss, access to, use, alteration, correction or disclosure of Personal Data, and such measures must be reviewed when it is necessary, or when the technology has changed in order to efficiently maintain the appropriate security and safety. It shall also be in accordance with the minimum standard specified and announced by the Committee;
- (2) in the circumstance where the Personal Data is to be provided to other Persons or legal persons, apart from the Data Controller, the Data Controller shall take action to prevent such person from using or disclosing such Personal Data unlawfully or without authorization;
- (3) put in place the examination system for erasure or destruction of the Personal Data when the retention period ends, or when the Personal Data is irrelevant or beyond the purpose necessary for which it has been collected, or when the data subject has request to do so, or when the data subject withdraws consent, except where the retention of such Personal Data is for the purpose of freedom of expression, the purpose under Section 24 (1) or (4) or Section 26 (5) (a) or (b) , the purpose of the establishment, compliance or exercise of legal claims, or defense of legal claims, or the purpose of compliance with the law. The provision in Section 33 paragraph five shall be used to govern the erasure or destruction of Personal Data mutatis mutandis;
- (4) notify the Office of any Personal Data breach without delay and, where feasible, within 72 hours after having become aware of it, unless such Personal Data breach is unlikely to result in a risk to the rights

and freedoms of the Persons. If the Personal Data breach is likely to result in a high risk to the rights and freedoms of the Persons, the Data Controller shall also notify the Personal Data breach and the remedial measures to the data subject without delay. The notification and the exemption to the notification shall be made in accordance with the rules and procedures set forth by the Committee;

- (5) in the event of being the Data Controller pursuant to Section 5 paragraph two, the Data Controller shall designate in writing a representative of the Data Controller who must be in the Kingdom of Thailand and be authorized to act on behalf of the Data Controller without any limitation of liability with respect to the collection, use or disclosure of the Personal Data according to the purposes of the Data Controller.”

Section 39 of the PDPA states that “The Data Controller shall maintain, at least, the following records in order to enable the data subject and the Office to check upon, which can be either in a written or electronic form:

- (1) the collected Personal Data;
- (2) the purpose of the collection of the Personal Data in each category;
- (3) details of the Data Controller;
- (4) the retention period of the Personal Data;
- (5) rights and methods for access to the Personal Data, including the conditions regarding the Person having the right to access the Personal Data and the conditions to access such Personal Data;
- (6) the use or disclosure under Section 27 paragraph three;
- (7) the rejection of request or objection according to Section 30 paragraph three, Section 31 paragraph three, Section 32 paragraph three, and Section 36 paragraph one;
- (8) explanation of the appropriate security measures pursuant to Section 37 (1).

The provisions in paragraph one shall apply to the representative of the Data Controller under Section 5 paragraph two *mutatis mutandis*.

The provisions in (1), (2), (3), (4), (5), (6) and (8) may not apply to the Data Controller who is a small organization pursuant to the rules as prescribed by the Committee, unless the collection, use, or disclosure of such Personal Data is likely to result in a risk to the rights and freedoms of data subjects, or not a business where the collection, use, or disclosure of the Personal Data is occasional, or involving in the collection, use, or disclosure of the Personal Data pursuant to Section 26.”

#### **f) Duties of the Data Processor**

Section 40 of the PDPA states that “The Personal Data Processor shall have the following duties:

- (1) carry out the activities related to the collection, use, or disclosure of Personal Data only pursuant to the instruction given by the Data Controller, except where such instruction is contrary to the law or any provisions regarding Personal Data protection under PDPA;
- (2) provide appropriate security measures for preventing unauthorized or unlawful loss, access to, use, alteration, correction or disclosure, of Personal Data, and notify the Data Controller of the Personal Data breach that occurred;
- (3) prepare and maintain records of personal data processing activities in accordance with the rules and methods set forth by the Committee.

The Data Processor, who fails to comply with (1) for the collection, use, or disclosure of the Personal Data, shall be regarded as the Data Controller for the collection, use, or disclosure of such Personal Data.

In carrying out the activities in accordance with the Data Processor's obligations as assigned by the Data Controller under paragraph one, the Data Controller shall prepare an agreement between the parties to control the activities carried out by the Data Processor to be in accordance with the Data Processor's obligations for compliance with PDPA.

The provisions in (3) may not apply to the Data Processor who is a small organization pursuant to the rules as prescribed by the Committee, unless the collection, use, or disclosure of such Personal Data is likely to result in a risk to the rights and freedoms of data subjects, or not a business where the collection, use, or disclosure of the Personal Data is occasional, or involving in the collection, use, or disclosure of the Personal Data pursuant to Section 26.”

**g) Additional responsibilities of the Data Controller and the Data Processor**

The following provisions are particularly relevant to the operation of the TNSW system, because the relevant GAs and governmental organisations and entities associated with the TNSW system will be (1) considered public authorities, (2) such TNSW activities will have a large number of Personal Data, and (3) the core activities will involve the collection, use, or disclosure of Personal Data.

Section 41 of the PDPA states that “The Data Controller and the Data Processor shall designate a data protection officer in the following circumstances:

- (1) the Data Controller or the Data Processor is a public authority as prescribed and announced by the Committee;
- (2) the activities of the Data Controller or the Data Processor in the collection, use, or disclosure of the Personal Data require a regular monitoring of the Personal Data or the system, by the reason of having a large number of Personal Data as prescribed and announced by the Committee;
- (3) the core activity of the Data Controller or the Data Processor is the collection, use, or disclosure of the Personal Data according to Section 26.

In the event that the Data Controller or the Data Processor are in the same affiliated business or are in the same group of undertakings, in order to jointly operate the business or group of undertakings as prescribed and announced by the Committee according to Section 29 paragraph two, such Data Controller or Data Processor may jointly designate a data protection officer. In this regard, each establishment of the Data Controller or the Data Processor in the same affiliated business or in the same group of undertakings must be able to easily contact the data protection officer.

The provisions in paragraph two shall apply to the Data Controller or the Data Processor who is a public authority in (1) that is large in size or has several establishments mutatis mutandis.

In the event that the Data Controller or the Data Processor in paragraph one has to designate the representative according to Section 37 (5), the provisions in paragraph one shall apply to the representative mutatis mutandis.

The Data Controller and the Data Processor shall have an obligation to provide the information of the data protection officer, contact address, and contact channels to the data subject and the Office. The data subject shall be able to contact the data protection officer with respect to the collection, use, or disclosure of the Personal Data and the exercise of rights of the data subject under PDPA.

The Committee may prescribe and announce the qualifications of the data protection officer by taking into account the knowledge or expertise with respect to the Personal Data protection.

The personal data protection officer may be a staff of the Data Controller or the Data Processor, or a service provider under the contract with the Data Controller or the Data Processor.”

**Duties of the designated data protection officer**

Section 42 of the PDPA states that “The data protection officer shall have the following duties:

- (1) give advices to the Data Controller or the Data Processor, including the employees or service providers of the Data Controller or of the Data Processor with respect to compliance with PDPA;

- (2) investigate the performance of the Data Controller or the Data Processor, including the employees or service providers of the Data Controller or of the Data Processor with respect to the collection, use, or disclosure of the Personal Data for compliance with PDPA;
- (3) coordinate and cooperate with the Office in the circumstance where there are problems with respect to the collection, use, or disclosure of the Personal Data undertaken by the Data Controller or the Data Processor, including the employees or service providers of the Data Controller or of the Data Processor with respect to the compliance with PDPA;
- (4) keep confidentiality of the Personal Data known or acquired in the course of his or her performance of duty under PDPA.

The Data Controller or the Data Processor shall support the data protection officer in performing the tasks by providing adequate tools or equipment as well as facilitate the access to the Personal Data in order to perform the duties.

The Data Controller or the Data Processor shall not dismiss or terminate the data protection officer's employment by the reason that the data protection officer performs his or her duties under PDPA. In the event that there is any problem when performing the duties, the data protection officer must be able to directly report to the chief executive of the Data Controller or the Data Processor.

The data protection officer may be able to perform other duties or tasks but the Data Controller or the Data Processor must warrant to the Office that such duties or tasks are not against or contrary to the performance of the duties under PDPA."

### **Conclusions**

**The Personal Data Protection Act 2019 governs the collection, use, and disclosure of personal data (including personal data belonging to users of the TNSW system) and is the most authoritative legislation mandating data protection and privacy for organizations and individuals under the jurisdiction of Thailand.**

**However, in the context of the TNSW, protection needs to be extended to the confidential commercial data which is contained in the data messages. Currently the PDPA does not cover such information and there are no specific laws in Thailand governing the protection of commercial data. However, protection is afforded, to some extent, by the TCCC, the TCC, and other ancillary legislation.**

### **9.2.3 Sharing of Data**

#### **Analysis**

The issue of sharing of data concerns the ability of GAs to exchange data about a trader or a transaction with each other for the operational purposes, such as risk targeting (e.g. building a trader's profile), or statistical purposes, effectively G2G exchanges of private and confidential data.

Sharing of data between GAs, in most jurisdiction, is permissible as long as this is in order to provide a public service or for the benefit of the public. The TNSW is a public service and any exchange of information would be aimed either at facilitating the process of import/export/transit or preventing fraud which are both, arguably, public services for the benefit of the public.

Provisions for sharing of data between GAs are to be found in the Personal Data Protection Act 2019.

The PDPA governs all collection, use, and disclosure of the personal data of a natural (and living) person, with certain exceptions (as listed in its provisions, such as household activities), and as such, all provisions are related to the sharing of data (including GAs, governmental organisations and entities) as listed above in the Data Privacy and Protection section.

## **Sharing of Personal Data**

### **Lawful basis for sharing personal data**

Section 27 of the PDPA states that “The Data Controller shall not use or disclose Personal Data without the consent of the data subject, unless it is the Personal Data which is collected without requirement of consent under Section 24 or Section 26.

The Person or juristic person who obtains Personal Data as a result of the disclosure under paragraph one shall not use or disclose such Personal Data for any purpose other than the purpose previously notified to the Data Controller in the request to obtain such Personal Data.

In the event that the Data Controller uses or discloses the Personal Data which is exempted from consent requirement in paragraph one, the Data Controller shall maintain a record of such use or disclosure in the record under Section 39.”

### **Lawful basis for sharing personal data without consent**

Section 24 of the PDPA states that “The Data Controller shall not collect Personal Data without the consent of the data subject, unless:

- (1) It is for the achievement of the purpose relating to the preparation of the historical documents or the archives for public interest, or for the purpose relating to research or statistics, in which the suitable measures to safeguard the data subject’s rights and freedoms are put in place and in accordance with the notification as prescribed by the Committee;”

This means that the PDPA allows for the collection of Personal Data without consent, if used for research or statistical purposes, such as for intelligence or profiling by GAs.

Section 26 of the PDPA states that any collection of Sensitive Data without explicit consent is prohibited, except as described in part (3) and sub-part (d), “It is necessary for compliance with a law to achieve the purposes with respect to... the scientific, historical, or statistic research purposes, or other public interests which must be carried out only to the extent necessary to achieve such purposes...”

This means that the PDPA allows for the collection of Sensitive Data without explicit consent, if there is a law that requires such for the abovementioned and other public interest purposes as provisioned.

### **Sharing personal data to a foreign country**

Section 28 of the PDPA states that “In the event that the Data Controller sends or transfers the Personal Data to a foreign country, the destination country or international organization that receives such Personal Data shall have adequate data protection standard, and shall be carried out in accordance with the rules for the protection of Personal Data as prescribed by the Committee in Section 16(5), except in the following circumstances:

- (1) where it is for compliance with the law;
- (2) where the consent of the data subject has been obtained, provided that the data subject has been informed of the inadequate Personal Data protection standards of the destination country or international organization;
- (3) where it is necessary for the performance of a contract to which the data subject is a party, or in order to take steps at the request of the data subject prior to entering into a contract;
- (4) where it is for compliance with a contract between the Data Controller, and other Persons or juristic persons for the interests of the data subject;
- (5) where it is to prevent or suppress a danger to the life, body, or health of the data subject or other Persons, when the data subject is incapable of giving the consent at such time;
- (6) where it is necessary for carrying out the activities in relation to substantial public interest.

In the event that there is a problem with regard to the adequacy of Personal Data protection standards of the destination country or international organization, such problem shall be submitted to the Committee to decide. The decision made by the Committee may be reviewed when there is a new evidence convincing that the destination country or international organization that receives such Personal Data has developed adequate Personal Data protection standards.”

Section 29 of the PDPA states that “In the event that the Data Controller or the Data Processor who is in the Kingdom of Thailand has put in place a Personal Data protection policy regarding the sending or transferring of Personal Data to another Data Controller or Data Processor who is in a foreign country, and is in the same affiliated business, or is in the same group of undertakings, in order to jointly operate the business or group of undertakings. If such Personal Data protection policy has been reviewed and certified by the Office, the sending or transferring of Personal Data to a foreign country, which is in accordance with such reviewed and certified Personal Data protection policy, can be carried out and shall be exempt from compliance with Section 28.

The Personal Data protection policy, the nature of the same affiliated undertaking or affiliated business in order to jointly operate the undertaking or business, and the rules and methods for the review and certification in paragraph one shall be as prescribed and announced by the Committee.

In the absent of a decision by the Committee in accordance with Section 28, or the Personal Data protection policy referred in paragraph one, the Data Controller or the Data Processor may send or transfer the Personal Data to a foreign country in exemption to compliance with Section 28, if the Data Controller or the Data Processor provides suitable protection measures which enable the enforcement of the data subject’s rights, including effective legal remedial measures according to the rules and methods as prescribed and announced by the Committee.”

### **Conclusions**

**The provisions above allow data to be exchanged between GAs within the TNSW environment, as long as they are in compliance with the listed duties and responsibilities.**

**It has to be noted, however, that, should the “single submission” model of Single Window be fully adopted, data would not be sent directly to Customs or to the other GAs individually. Some or all of data would be sent to the TNSW facility and would sit in the TNSW central database, permanently or for a limited period. This data is then made accessible to any GAs that require it, either by downloading it to their own back-office systems or by processing it in the “cloud”. This means that the data resides with TNSW and not the agency or, possibly, with both in which case there would be an obligation on the Government to guarantee the integrity of both versions.**

**Furthermore, data sent by the user to the TNSW must have the same legal value it would have if it had been sent directly to the GAs that have a need to receive it.**

### **9.2.4 Dispute and Dispute Resolution**

#### **Analysis**

Dispute resolution provisions are provided for in the PDPA, but not the ETA nor EPA.

The following clauses are relevant.

#### **Personal Data Protection Act 2019**

Chapter 5 of the PDPA establishes one or more expert committees based upon their field of expertise (or as the Personal Data Protection Committee (“Committee”) deems fit) to govern complaints under the PDPA.

Section 72 of the PDPA states that “The expert committee shall have the following duties and power:

- (1) Consider complaints under this Act;
- (2) Investigate any act of the Data Controller or the Data Processor, including the employees or the contractors of the Data Controller or the Data Processor in connection with the Personal Data that causes damage to the data subject;
- (3) Settle disputes in connection with Personal Data;
- (4) Carry out any other acts which are stipulated as the expert committee’s duty and power under this Act or as assigned by the Committee”

Section 73 of the PDPA states that “The data subject has the right to file a complaint in the event that the Data Controller or the Data Processor, including the employees or the service providers of the Data Controller or the Data Processor violates or does not comply with this Act, or notifications issued in accordance with this Act.

The filing, refusal of acceptance, dismissal, consideration, and timeframe for the consideration of the complaints shall be in accordance with the Committee’s rule by taking into account the refusal of acceptance of the complaints or dismissal of the matter in the event that there has been the authority to consider such matter under other laws.”

Section 74 of the PDPA states that “In the event that a complainant does not comply with the rules provided in Section 73 paragraph two, or the complaint filed is prohibited from being accepted for consideration under such rules, the expert committee shall not accept such complaint for consideration.

If, after the expert committee’s consideration of the complaint pursuant to section 72 (1), or the investigation of any act pursuant to Section 72 (2), it is found that such complaint or act has no ground, the expert committee shall issue an order to dismiss such complaint or investigation.

If, after the expert committee’s consideration or investigation under paragraph two, it is found that such complaint or act can be settled, and the concerned parties are willing to settle the dispute, the expert committee shall proceed with the dispute settlement. However, if such complaint or act cannot be settled, or the dispute settlement fails, the expert committee shall have the power to issue the following orders:

- (1) For the Data Controller or the Data Processor to perform, or rectify their act within the specified period of time;
- (2) to prohibit the Data Controller or the Data Processor from carrying out an act which causes damage to the data subject, or for the Data Controller to carry out any act to cease the damage within the specified period of time;

In the event that the Data Controller or the Data Processor does not comply with the orders provided under paragraph three (1) or (2), the provisions in connection with administrative enforcement under the law on administrative procedure shall be applied mutatis mutandis. In the event that the properties of the Data Controller or the Data Processor are to be seized, attached, or sold by auction, as required by the law on administrative procedure, the expert committee shall have the power to order such seizure, attachment, and sale by auction for such purpose.

The issuance of the order under paragraph one, two, or three (1) or (2) shall be in accordance with the criteria and methods under the Committee’s notification.

The order of the expert committee in this Section shall be final.

In order to proceed in accordance with this section, when the consideration result is issued, the expert committee shall inform the complainant of such result together with the reasons. In case that the complaint is not accepted for consideration or dismissed as such complaint has already been under consideration of an official authority under other laws, the expert committee shall inform the complainant of the same. If the complainant wishes to propose such matter to the official authority under other laws, the expert committee

shall proceed to do so and shall be deemed that such official authority has received such complaint from the date when the expert committee has received such complaint.”

Section 75 of the PDPA states that “The expert committee shall have the power to order any person to submit documents or information in connection with the subject matter of a complaint, or any other matter related to the protection of the Personal Data under this Act. The expert committee shall also have the power to request any person to make a statement of facts.”

Section 76 of the PDPA states that “In order to act in accordance with this Act, the Competent Officer shall have the following duties and power:

- (1) request the Data Controller, the Data Processor, or any person in writing, to provide information or submit any documents or evidence in connection with the actions or offenses under this Act;
- (2) investigate and collect facts, and report to the expert committee in the event that the Data Controller, the Data Processor, or any person, has committed an offense or caused damage due to their violation of or non-compliance with this Act or notifications issued in accordance with this Act.

In carrying out the duty in (2), if there is a necessity to protect the benefits of the data subject or for public's interest, the Competent Officer shall file a complaint to the competent court to issue an order granting permission to the Competent Officer to enter the premises of the Data Controller, or any person involved in the offense under this Act, during the interval between sunrise and sunset or during the business hours of such premises, to investigate and collect facts, seize, or attach documents, evidence, or any other items related to the offense, or which has a cause to believe that they are used to commit such offense.

In order to appoint the Competent Officer, the Minister shall consider appointing such person from the civil officials or other government officials whose position is not lower than a civil official at the operational level or equivalent, and having the qualifications in accordance with the notification issued by the Committee.”

Violations of the PDPA carry civil liabilities and penalties (outlined in Sections 77 and 78), criminal liabilities (outlined in Sections 79-81), and administrative liabilities and penalties (outlined in Sections 82-90).

### **Electronic Transaction Act 2001**

The ETA does not contain any specific dispute or dispute resolution provisions. However, violations of the ETA carry penalties, which are outlined in Chapter 6 Sections 44-46.

### **Electronic Performance of Administrative Functions Act 2022**

The EPA does not contain any specific dispute or dispute resolution provisions.

### **Dispute Resolution in general**

There is no single law that is most pertinent to dispute resolution in Thailand. Disputes are governed by the nature of the parties in dispute, and the conduct in dispute. There would be no special considerations for disputes within the TNSW system, as there are not yet any specific dispute resolution laws passed in regulation of the TNSW System, as is the case with disputes regarding Intellectual Property Rights (which has its own associated laws and in the jurisdiction of the Central Intellectual Property and International Trade Court). As such, disputes within the TNSW system fall into the following general categories.

- (1) Administrative Disputes
  - (a) Any disputes regarding GAs or governmental organizations, and governmental misconduct within the scope of their authority/duties, would fall under the jurisdiction of Administrative Courts, and be governed by rules regarding administrative procedures.
- (2) Civil Disputes
  - (a) Any disputes regarding GAs, governmental organizations, or private entities and persons, and misconduct in breach of contracts or agreements (in the case of GAs or governmental organizations,



such contracts or agreements are not administrative contracts or agreements), would fall under the jurisdiction of Civil Courts, and be governed by rules regarding civil procedures.

### (3) Criminal Disputes

- (a) Any disputes regarding GAs, governmental organizations, or private entities and persons, and their misconduct specifically listed in any regulations or acts that list such provisions as criminal, would fall under the jurisdiction of Criminal Courts, and be governed by rules regarding criminal procedures.

Please note that if the disputed matter has a specified set of regulations and venue (such as Intellectual Property Rights), such disputes would be governed by the relevant rules of the associated matter, and be required to comply with such dispute resolution provisions that assign the appropriate Court.

#### **Conclusions**

**The provisions above are adequate to provide the basis for dispute resolution in the TNSW environment.**

### 9.2.5 Intellectual Property Rights

#### **Analysis**

Protection of Intellectual Property Rights (IPR) provisions are provided for in several different pieces of legislation, each pertaining to a particular type of Intellectual Property. Examples of such laws that may be relevant to the services offered by the TNSW are (1) the Trademark Act B.E. 2534 (1991), as amended, (2) the Patent Act B.E. 2522 (1979), as amended, (3) the Copyright Act B.E. 2537 (1994), as amended, and (4) the Trade Secrets Act B.E. 2545 (2002), as amended.

There is no single overarching law protecting intellectual property rights in Thailand. There are different laws that govern different intellectual property rights. Although the different intellectual property rights are regulated by their own associated acts, they all fall under the jurisdiction of the Thai Department of Intellectual Property (DIP). As such, the protection of intellectual property rights within the NSW system (and any violations of such relevant acts) would fall under the purview of the DIP, and must abide by the provisions of their own respective acts irrespective of the platform (whether within the TNSW system or not).

#### **Conclusions**

**The provisions above are adequate to provide the basis for IPR protection in the TNSW environment.**

### 9.2.6 Competition Issues

#### **Analysis**

Competition provisions are provided for in the Trade Competition Act B.E. 2560 (2017), which governs competition within the private sector and came into force October 5, 2017.

The following clauses are relevant.

#### **Trade Competition Act of 2017**

Section 4 of the Trade Competition Act of 2017 (TCA) states that “This Act shall not apply to acts of:

- (1) The central administration, provincial administration and local administration;
- (2) a State enterprise, a public organization or any other agency of the State, only insofar as they are performed in accordance with the law or resolutions of the Council of Ministers necessary for the maintenance of State security, public interests, public benefits or the provision of public utilities...”

In accordance with Section 4 part 2, both the Customs Department (as a state agency) and National Telecom Public Company Limited (NT), the entity designated by Customs to develop and provide TNSW services (as a State enterprise), are exempt from complying with the TCA.

However, private entities still must abide by the provisions of the TCA regarding fair competition, anti-competitive practices in the marketplace, monopolies, unfair trade practices, and abuse of dominant market positions that can harm competition and limit consumer choices.

Participation by private sector providers of connectivity or value added services for the TNSW is subject to approval by NT if they are able to meet terms and conditions set by NT. Oversight of the decisions made by NT in this respect is provided by the TNSW Sub-committee.

### **Conclusions**

**The provisions above would appear to be adequate to provide the basis for competition/dispute resolution for the private sector in the TNSW environment. However, they will need to be re-assessed once the terms of the licensing agreement between Customs and NT are opened to scrutiny.**

## **9.2.7 Financing**

### **Analysis**

At present the fee payable by a user for submitting a transaction via the TNSW is a flat THB 25 per transaction with a discount scale based on the number of transactions. This fee is charged by the VASs for every B2G transaction conducted through them and the VAS is allowed to retain it. The fee is determined by Customs.

No fees are being charged by specifically for using the TNSW other than normal network access.

Currently, there are no specific regulations, laws, or legislation in place governing fees charged to private sector users of the TNSW system.

Furthermore, there is no single overarching law or legislation that governs the fees and charges levied by Thai GAs, state organizations, and governmental departments. Such fees and charges for services provided to the public are generally governed by the relevant notifications and regulations of their respective GAs.

It can be inferred from the Resolution of the National Logistics and Services Management System Development Committee (NLDC )No. 2/2565 dated October 10, 2022 (approved by the Resolution of the Cabinet dated 13 December 2022) that fees regarding the NSW are considered by the NLDC Sub-committee on the National Single Window (the “TNSW Sub-committee”) Administration and Development. The Sub-Committee may determine the maximum fees and charges to be levied for all users of the TNSW system in accordance with the abovementioned Resolution.

### **Conclusions**

**Due to the lack of legislative provisions regarding the determination of fees associated with the operation of the TNSW system, and the inability to confirm the accuracy and reliability of the information provided by the government officers, it is recommended that further clarification be sought regarding such fees.**

## **9.3 Analysis of National Legislation**

This section is an analysis of the current legislation which is related to import/exports or transits. The legislation comprises both primary laws and implementing regulation.

The purpose of the analysis is to establish whether any current laws or regulations pose an impediment to specific requirements of the TNSW in the way they are currently worded, despite any overarching laws that may exist. Typically, conflict may arise whenever the legislation requires that traders exchange “documents” or “forms” with a GA. These documents may be newly drafted applications for Certificates, Licenses, Permits or other Authorizations (CLPA), original or copies of supporting documents to prove credentials (e.g. TIN, Company Registration No., Importer/Exporter Registration No., Customs Broker Registration No., Tax compliance certificate, etc.), originals or copies of documents such as commercial invoice, bill of lading, load lists, etc. Traditionally the common meaning of the word “document” implied that it was made of paper. Similarly, the word “signature” implied a hand-written signature and the word “stamp” implied a physical rubber stamp.

The existence of ‘overarching’ laws may override these interpretations and confer on these words the alternative meaning of “electronic data record”. The purpose of the analysis is to verify that this is the case across all the legislation that affects cross-border trade.

### 9.3.1 Customs Act B.E. 2560 (2017), as amended

The Customs Act of 2017 came into force on November 13, 2017

The Customs Act governs the import and export of goods, and provides guidelines for customs procedures and clearance. The Customs Act also outlines the powers and duties of the Customs Department, including the inspection and valuation of goods, the collection of customs duties and taxes, and the enforcement of customs laws and regulations. The Customs Act contains a provision for giving legal validity to electronic data messages in Customs proceedings.

The following clauses in the Customs Act are relevant.

Section 11 of the Customs Act states that “Customs proceedings, if performed in the form of a data message, shall be deemed to have the same legal effects as those afforded to paper-based customs proceedings. In this regard, the use of data messages in customs affairs shall be in accordance with the law on electronic transactions.

Therefore, the Customs Act is compatible with, and legislatively reinforces, the ETA and the EPA by providing an additional legal framework for electronic transactions and administrative functions related to Customs procedures. The provision above references that such use of data messages will be in accordance with laws on electronic transactions, and due to the ETA being superseded by the EPA regarding electronic transactions involving governmental organisations, will currently be in accordance with the EPA.

### 9.3.2 Other Laws

The ETA and the EPA, as the two most authoritative pieces of legislation governing the validity, use, and acceptance of electronic documents, signatures, and stamps, supersede any other legislation not specifically exempted. Therefore, in the case of discrepancies with any conflicting legislation, the ETA and EPA would prevail (except in the exempted cases as provided for within their own language). Furthermore, there are no e-commerce nor e-Government laws that would supersede the ETA or the EPA. However, as previously mentioned above and provided for in the ETA and the EPA, GAs may apply for an exemption from their provisions by Royal Decree in accordance with such exemption provisions.

## 9.4 Establishment of the National Single Window

**Thailand has already established, implemented, and is currently operating, a National Single Window system. The establishment of the TNSW and its mandate are in force through the provisions below.**

### Cabinet and NLDC

The Cabinet of Thailand (pursuant to the Cabinet Resolution of December 6, 2005) assigned the Thai Customs Department as the main agency for establishing the TNSW in accordance with the ASEAN Single Window.

Pursuant to the National Strategy Plan for 2007-2011 of Thailand, the National Logistics and Services Management System Development Committee, known as the NLDC, was established to oversee the logistic plan of Thailand through the Order of the Office of the Prime Minister No. 90/2550 Re: the Establishment of the NLDC and, subsequently, through the Regulation of the Office of the Prime Minister Re: National Logistics and Services Management System Development B.E. 2552 (2009) (as amended). The regulation provides authorities for the NLDC, among other things, to provide opinions or advice to the Cabinet on the Development of the national logistics and services management system, and to appoint sub-committees to perform any tasks related to the national logistics and services management system.

In conjunction with the Cabinet Resolution and these newly designated authorities, the NLDC passes resolutions in meetings (with Cabinet approval), and assigned the Customs Department as the GA

responsible for the development of the TNSW, and perform tasks in accordance with the meeting resolutions, such as establishing a national action plan and indicating annual key performance indicators for the TNSW's development.

### **Sub-Committee**

On May 30, 2017, the NLDC appointed a sub-committee, known as the Sub-Committee on the National Single Window Administration and Development ("TNSW Sub-committee"), to regulate, oversee and control the TNSW operator in order to ensure security and continuation of the TNSW system (pursuant to the Order of the National Logistics and Services Management System Development Committee No. 1/2017 Re: the Appointment of the Sub-Committee on the National Single Window (NSW) Administration and Development). However, the chairman of such Sub-Committee is the Director-General of the Thai Customs Department. Therefore, from the aforementioned authorities of NLDC and the responsibilities of the Customs Department, there may be a conflict of interest in relation to the development and operation of the TNSW system in Thailand.

Further secondary legislation (pursuant to the Regulation of the Office of the Prime Minister Re: the Electronic Data Integration for the Import, Export, Transition and Logistics B.E. 2557 (2014)) assigned the Customs Department the responsibility for the development of the TNSW system in accordance with the regulation.

### **NT**

On October 16, 2018 (pursuant to the Cabinet Resolution of October 16, 2018), Communications Authority of Thailand (CAT), amongst two other service providers i.e. Trade Siam Company Limited and NetBay Public Company Limited, was chosen by the TNSW Sub-committee as the TNSW operator to develop and provide the services relating to the TNSW system. The Cabinet also assigned the Customs Department to proceed with all actions required to engage CAT as TNSW operator, including entering into an agreement with CAT. On December 22, 2020, the Customs Department and CAT entered into the Licensing Agreement for NSW System Services No. 50/2564 dated December 22, 2020 (the "2020 Licensing Agreement"). The 2020 Licensing Agreement was subsequently transferred to the National Telecom Public Company Limited (NT), due to amalgamation between CAT and the Telephone Organization of Thailand (TOT).

When requested, the Customs Department refused access to the 2020 Licensing Agreement, citing government privilege regarding its contents, and as such, the agreement is not available to the public. Therefore, we are unable to review the rights and obligations of both the Customs Department and NT under the 2020 Licensing Agreement.

However, regarding such a Licensing Agreement, we can see the following information from the Cabinet Resolution of December 13, 2022 (referring to the Cabinet Resolution of October 16, 2018 and the 2020 Licensing Agreement), stating that NT's role is to provide the following functions:

- 1) Provide NSW computer systems to replace old systems;
- 2) Develop the national central system, a single form, and gateway systems for governmental authorities;
- 3) Develop coordination systems between logistics business operators;
- 4) Develop a linkage system for online payment;
- 5) Develop other systems to support electronic information transfers and G2G
- 6) Develop the linkage and exchange of electronic data between departments, both domestic and international, for providing services to entrepreneurs, agencies, and the public; and
- 7) Provide advice, guidance, and solutions related to electronic information transfers via the NSW system.

The Cabinet also considered the current role of NT in relation to the TNSW system, and appointed the Customs Department to revise the scope of the functions of NT as appropriate.

Furthermore, through discussions during a meeting with the Customs Department, a Customs officer shared the following information:

- 1) The Customs Department is responsible for the TNSW system, and has outsourced the duties to operate and develop the TNSW system to NT;
- 2) the Customs Department holds ultimate responsibility for any issues with the TNSW system, and the 2020 Licensing Agreement included provisions to indemnify NT;
- 3) users must register for the TNSW system with the Customs Department; and
- 4) if there are any issues with the TNSW system, the Customs Department should be the first point of contact.

It is important to note that although informative, such discussions with government officers are not always accurate or reliable. As such, we recommend obtaining a copy of the 2020 Licensing Agreement to confirm its information (if possible).

**Regardless of the content of such a Licensing Agreement, the Customs Department, as the entity accountable, should provide Service Level Agreements (SLA) to the users of the TNSW system. Such SLAs are presently non-existent, resulting in the operation of the TNSW without any assurances of service, performance, or remedies. This constitutes a significant deficiency that requires rectification. The Licensing Agreement entered between the Customs Department and NT should include comprehensive safeguards, including a back-to-back provision obligating NT to satisfy the terms of the SLA.**

### Conclusion

The legislative system by which the TNSW was established and now currently operates in Thailand is illustrated in the following picture.

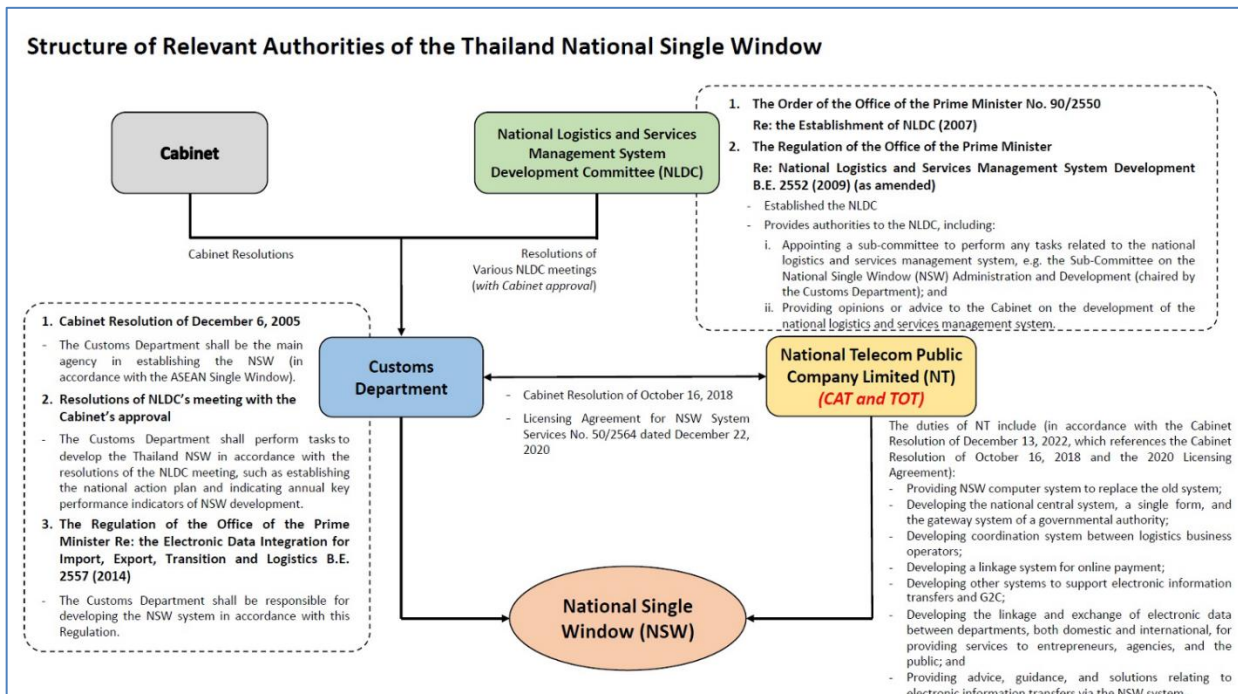


Figure 7: Structure of Relevant Authorities of the Thailand National Single Window

Although the legislative methods and authorities establishing and operating the TNSW are legally adequate, to avoid any potential issues and legal challenges, we believe that it would be desirable to issue a "TNSW Act" by primary law (i.e. passed by the National Legislative Assembly, such as in the case of the

ETA and EPA). Due to the complex nature of the NSW structure, it is important that the *TNSW Act* demarcates the respective domains and responsibilities of the parties involved, including any oversight of competition in the TNSW system. Issuing such an act would strengthen the authority of the TNSW's operation, and assist in consolidating and clarifying the governmental authorities, duties, and obligations behind the TNSW's system.

## 9.5 International Obligations

Countries that are members of the WTO, or are in the process of accession, have an obligation to comply with the provisions of the Trade Facilitation Agreement (TFA) which came into force in 2017. In fact, implementing a Single Window is itself an obligation under the TFA. Article 10/4 states:

"Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies."

Furthermore, the concept that the Single Window should be a "single submission" facility is enshrined in the same article:

"In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public."

The other provisions which also underpin the implementation of a NSW are at Article 8, on cooperation between border agencies:

"Each Member shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation, and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade."

Implementing a NSW is itself a manifestation of compliance with the above commitments which, otherwise, do not have a 'hard' impact on the national legal basis for a NSW in Thailand.

Of greater consequence, is the ability for a NSW to be able to facilitate the exchange of data and information between equivalent authorities in other countries or with an authority representing a trading bloc of countries of which Thailand is a member or has an agreement to that effect.

In fact, this is a mandatory requirement of certain agreements, such as the *ASEAN Trade In Goods Agreement* (ATIGA) which Thailand is a party to. ATIGA states<sup>25</sup>:

"Member States shall undertake necessary measures to establish and operate their respective National Single Windows and the ASEAN Single Window in accordance with the provisions of the *Agreement to Establish and Implement the ASEAN Single Window* and the *Protocol to Establish and Implement the ASEAN Single Window*."

**When talking about "inter-operability" between NSW and external systems, such as the ASEAN Single Window, what is generally intended is the exchange of 'documents' by means of an electronic data messages.**

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<sup>25</sup> ATIGA: ASEAN Trade In Goods Agreement, May 2010, Article 49

**Therefore, from a domestic legislation perspective, compatibility and compliance with these agreements is ensured by establishing in domestic law the basis of validity of electronic data records and their transferability as well as the provisions below for granting validity to foreign data.**

Implementation of the agreements for exchange of data enshrined in the agreements made with international/regional trading blocs may take time to be effected. However, the best way to prepare for them and ensure that the TNSW is always ready to participate is to ensure that all documents that will be required when trading with these entities can be generated electronically within the TNSW to the standards of integrity required by international standards (e.g. the UNCITRAL model of electronic signatures) and that are built using data sets that conform to international standards.

Indeed the use of international standards is another commitment under the TFA. Article 10.3 states:

“Members are encouraged to use relevant international standards or parts thereof as a basis for their import, export, or transit formalities and procedures, except as otherwise provided for in this Agreement.”

The use of international standards is strongly recommended by both UN/CEFACT’s Recommendations No. 33 and 35:

“The use of international standards is a necessary and key component of the Single Window implementation and operation processes. It allows for the scalability of provided services and ensures an easier interaction between all participants in an international supply chain.”<sup>26</sup>

Data exchange with regional/international system is normally effected by means of an exchange of messages. Therefore, the best way to ensure inter-operability is by making sure that the data sets are compatible to the extent that data elements are semantically equivalent (i.e. have the same meaning), for example, the words ‘country of origin’ mean the same thing in both system.

When dealing with trade related data, the prevailing international standard is the WCO Data Model 3.x<sup>27</sup> (DM3). The WCO DM3 itself leverages the UNTDED ISO-7372 data set, a set of data elements intended to facilitate an open interchange of data in international trade.

Thailand’s TNSW data dictionary is already built upon a Harmonized Data Model (HDM) compatible with the DM3, albeit one of the earlier versions.

**It would, however, be good practice to include a provision in legislation to ensure that the current and future adherence to international standards is an obligation in law. First of all, an electronic record received from another jurisdiction should have the same validity in the national jurisdiction as an electronic record generated domestically. If this provision is not already catered for in existing e-transactions legislation, then it could be included in a potentially new *NSW Act* (as recommended above). UNCITRAL’s recommends the following wording:**

“An electronic transferable record shall not be denied legal effect, validity or enforceability on the sole ground that it was issued or used abroad.”<sup>28</sup>

The *NSW Act* should, more specifically, state that the international standards (such as the WCO DM3) should be mandatory in the design of the TNSW database and data messages.

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<sup>26</sup> UN/CEFACT, Recommendation No. 35, Chapter III

<sup>27</sup> At the time of writing the latest version is the Data Model 3.11

<sup>28</sup> UNCITRAL Model Law on Electronic Transferable Records, 2017, Article 19

## 9.6 Conclusions and Recommendations on Legal Issues

Name of Law/Regulation	Date of Coming into Force	Type	Issued by	Administered By	Conclusions & Recommendations
<b>Cabinet Resolution of December 13, 2022</b>	13-Dec-2022	-	Cabinet	Relevant agencies assigned by the Cabinet	It can be inferred from this Resolution that the service fee charged by NT must comply with the requirements of the TNSW Sub-Committee on Administration and Development
<b>Cabinet Resolution of December 6, 2005</b>	6-Dec-2005	-	Cabinet	Relevant agencies assigned by the Cabinet	Thailand has already established, implemented, and is currently operating, a National Single Window system. The establishment of the TNSW and its mandate are in force through the provisions.
<b>Cabinet Resolution of October 16, 2018</b>	16-Oct-2018	-	Cabinet	Relevant agencies assigned by the Cabinet	Thailand has already established, implemented, and is currently operating, a National Single Window system. The establishment of the TNSW and its mandate are in force through the provisions.
<b>Civil and Commercial Code</b>	1-Jan-1925	Primary Law	Parliament	-	In the context of the TNSW, protection needs to be extended to the confidential commercial data which is contained in the data messages. Currently the PDPA does not cover such information and there are no specific laws in Thailand governing the protection of commercial data.
<b>Civil Procedure Code B.E. 2478 (1935) (as amended)</b>	20-Jun-1935	Primary Law	Parliament	Minister of Justice	However, protection is afforded, to some extent, by the TCCC, the TCC, and other ancillary legislation.
<b>Computer-Related Crimes Act B.E. 2550 (2007)</b>	18-Jul-2007	Primary Law	Parliament	Ministry of Digital Economy and Society	



Name of Law/Regulation	Date of Coming into Force	Type	Issued by	Administered By	Conclusions & Recommendations
<b>Copyright Act B.E. 2537 (1994) (as amended)</b>	21-Mar-1994	Primary Law	Parliament	Department of Intellectual Property	The provisions are adequate to provide the basis for IPR protection in the TNSW environment.
<b>Criminal Code</b>	1-Jan-1957	Primary Law	Parliament	-	In the context of the TNSW, protection needs to be extended to the confidential commercial data which is contained in the data messages. Currently the PDPA does not cover such information and there are no specific laws in Thailand governing the protection of commercial data. However, protection is afforded, to some extent, by the TCCC, the TCC, and other ancillary legislation.
<b>Criminal Procedure Code B.E. 2478 (1935) (as amended)</b>	10-Jun-1935	Primary Law	Parliament	President of the Supreme Court, Prime Minister, Minister of Interior, and Minister of Justice	
<b>Customs Act B.E. 2560 (2017)</b>	13-Nov-2017	Primary Law	Parliament	Ministry of Finance	The Customs Act is compatible with, and legislatively reinforces, the ETA and the EPA by providing an additional legal framework for electronic transactions and administrative functions related to Customs procedures.
<b>Electronic Performance of Administrative Functions Act B.E. 2565 (2022)</b>	10-Jan-2023 (except the provisions in section 12, second paragraph of section 15, section 19, and section 22 which were fully effective as of Jan 13, 2022)	Primary Law	Parliament	Prime Minister	The provisions are adequate to provide the basis for dispute resolution in the TNSW environment.
<b>Electronic Transactions Act</b>	3-Apr-2002	Primary Law	Parliament	Ministry of Digital Economy and Society	In conjunction, the Electronic Transaction Act of 2001 and the

Name of Law/Regulation	Date of Coming into Force	Type	Issued by	Administered By	Conclusions & Recommendations
<b>B.E. 2544 (2001) (as amended)</b>					Electronic Performance of Administrative Functions Act of 2022 provide the fundamental authorities and legislative platform necessary for the validity, submission, and acceptance of electronic documents, signatures, and stamps in electronic transactions and all that they entail, including those involving state organizations and government entities.
<b>Electronic Transactions Development Agency Act B.E. 2562 (2019)</b>	15-Apr-2019	Primary Law	Parliament	Ministry of Digital Economy and Society	
<b>NT's Notification Re: Service Fee of National Single Window (NSW)</b>	19-Dec-2022	Notification	NT	NT	Due to the lack of legislative provisions regarding the determination of fees associated with the operation of the TNSW system, and the inability to confirm the accuracy and reliability of the information provided by the government officers, it is recommended that further clarification be sought regarding such fees.
<b>NT's Notification Re: User Qualifications and Data Linkage Standards with National Single Window (NSW) Systems</b>	N/A	Notification	NT	NT	
<b>Order of the Office of the Prime Minister No. 90/2550 Re: the Establishment of the NLDC</b>	23-Mar-2007	Secondary Law	Office of the Prime Minister	Office of the Prime Minister	Thailand has already established, implemented, and is currently operating, a National Single Window system. The establishment of the TNSW and its mandate are in force through the provisions.
<b>Patent Act B.E. 2522 (1979) (as amended)</b>	14-Jul-1992	Primary Law	Parliament	Department of Intellectual Property	The provisions are adequate to provide the basis for IPR protection in the TNSW environment.

Name of Law/Regulation	Date of Coming into Force	Type	Issued by	Administered By	Conclusions & Recommendations
<b>Personal Data Protection Act B.E. 2562 (2019)</b>	28-May-2019 (except the provisions in chapters 2, 3, 5, 6, 7, section 95, and section 96, which have come fully effective as of June 1, 2022)	Primary Law	Parliament	Office of the Personal Data Protection Committee (OPDPC)	<p>The Personal Data Protection Act 2019 governs the collection, use, and disclosure of personal data (including personal data belonging to users of the TNSW system) and is the most authoritative legislation mandating data protection and privacy for organizations and individuals under the jurisdiction of Thailand.</p> <p>However, in the context of the TNSW, protection needs to be extended to the confidential commercial data which is contained in the data messages. Currently the PDPA does not cover such information and there are no specific laws in Thailand governing the protection of commercial data. However, protection is afforded, to some extent, by the TCCC, the TCC, and other ancillary legislation.</p>
<b>Public Procurement and Supplies Administration Act B.E. 2560 (2017)</b>	23-Aug-2017	Primary Law	Parliament	Ministry of Finance	<p>Due to the lack of legislative provisions regarding the determination of fees associated with the operation of the TNSW system, and the inability to confirm the accuracy and reliability of the information provided by the government officers, it is recommended that further clarification be sought regarding such fees.</p>

Name of Law/Regulation	Date of Coming into Force	Type	Issued by	Administered By	Conclusions & Recommendations
<b>Regulation of the Office of the Prime Minister Re: National Logistics and Services Management System Development B.E. 2552 (2009) (as amended)</b>	23-May-2009	Secondary Law	Office of the Prime Minister	NLDC	Thailand has already established, implemented, and is currently operating, a National Single Window system. The establishment of the TNSW and its mandate are in force through the provisions.
<b>Regulation of the Office of the Prime Minister Re: the Electronic Data integration for Import, Export, Transition and Logistics B.E. 2557 (2014) (as amended)</b>	23-Sep-2014	Secondary Law	Office of the Prime Minister	Customs Department	In conjunction, the Electronic Transaction Act of 2001 and the Electronic Performance of Administrative Functions Act of 2022 provide the fundamental authorities and legislative platform necessary for the validity, submission, and acceptance of electronic documents, signatures, and stamps in electronic transactions and all that they entail, including those involving state organizations and government entities.
<b>Resolutions of the NLDC Meetings (with Cabinet Approval)</b>	2007-Present	-	NLDC	Relevant agencies assigned by NLDC	Thailand has already established, implemented, and is currently operating, a National Single Window system. The establishment of the TNSW and its mandate are in force through the provisions.
<b>The Royal Decree Prescribing Civil and Commercial Electronic Transactions Excluded From the Application of the Law on Electronic</b>	16-Mar-2007	Secondary Law	Parliament	Ministry of Digital Economy and Society	In conjunction, the Electronic Transaction Act of 2001 and the Electronic Performance of Administrative Functions Act of 2022 provide the fundamental authorities and

Name of Law/Regulation	Date of Coming into Force	Type	Issued by	Administered By	Conclusions & Recommendations
<b>Transactions B.E. 2549 (2006)</b>					legislative platform necessary for the validity, submission, and acceptance of electronic documents, signatures, and stamps in electronic transactions and all that they entail, including those involving state organizations and government entities.
<b>Trade Competition Act B.E. 2560 (2017)</b>	5-Oct-2017	Primary Law	Parliament	Office of Trade Competition Commission (OTCC)	The provisions would appear to be adequate to provide the basis for competition/dispute resolution for the private sector in the TNSW environment. However, they will need to be re-assessed once the terms of the licensing agreement between Customs and NT are opened to scrutiny.
<b>Trade Secret Act B.E. 2545 (2002) (as amended)</b>	22-Jul-2002	Primary Law	Parliament	Department of Intellectual Property	The provisions above adequate to provide the basis for IPR protection in the TNSW environment.
<b>Trademark Act B.E. 2534 (1991) (as amended)</b>	13-Feb-1992	Primary Law	Parliament	Department of Intellectual Property	The provisions are adequate to provide the basis for IPR protection in the TNSW environment.

Although the legislative methods and authorities establishing and operating the TNSW are legally adequate, to avoid any potential issues and legal challenges, we believe that **it would be desirable to issue a “TNSW Act” by primary law** (i.e. passed by the National Legislative Assembly, such as in the case of the ETA and EPA). Due to the complex nature of the NSW structure, it is important that the TNSW Act demarcates the respective domains and responsibilities of the parties involved, including any oversight of competition in the TNSW system. Issuing such an act would strengthen the authority of the TNSW’s operation, and assist in consolidating and clarifying the governmental authorities, duties, and obligations behind the TNSW’s system.

## 10 Risk Management and Border Agency Collaboration

Risk Management is typically understood to mean *“the methodology or practices used to determine which import, export or transit transactions or operators should be subject to control and the type and degree of control to be applied”*<sup>29</sup>.

Risk Management is an approach to selecting where and how to focus inspectors’ efforts by applying more or less labour-intensive approaches to the control of goods. This is in contrast with the traditional, labour-intensive approach of examining every single consignment.

Whilst the nature of risk is different for Customs and other border agencies, all of them have a specific interest in ensuring that risks are managed according to their definition. Therefore, risk management is a discipline which will benefit all GAs involved in border clearance and control.

Risk Management is closely linked to selectivity which allows the consignments that have been targeted by the risk profiling filters to be selected for treatment including inspection. Inspections should be closely coordinated between Customs and other border agencies.

The Mission Team found that Customs applies automated selectivity methods within e-Customs in order to produce a rating of green, yellow or red for the release and inspection of goods. Through risk profiling, Customs is able to send the majority of consignments to the green channel (clearance without inspection) or yellow channel (documentary inspection) and only approximately 20% to red channel (physical inspection). To do this, Customs also makes use of advanced copies of the manifest which they receive through the TNSW.

Most other agencies, however, do not rely on the manifest or other forms of prior alert nor do they use any form of selectivity, and simply rely on experience and visual assessment of CLPAs submitted to them to decide their inspections.

Risk Management benefits greatly from information being available for risk assessment on a shared basis across GAs in order to analyse trends and patterns and therefore, this is not possible in the current environment of the TNSW where information resides separately only in e-Customs and in the agency’s own system.

### 10.1 Current Situation

The Mission recognized the variety of roles and responsibilities of the numerous agencies that are engaged in the movement of goods across the international border. Whether it is in the approval phase (issuance of certificates, permits, licences or letters of recommendation) or the arrival phase, the opportunity to undertake risk assessment is very important to the future of Thailand trade and the security of the country.

The Mission was given to understand that risk management is not yet ‘best practice’ or embedded in the ministries. Some staff in some departments understand the rationale for using risk management while others are quite comfortable holding on to the paper-based and manual practices for issuing Certificates, Licenses, Permits and other forms of authorization (CLPA) and clearing cargo. Risk management practices must be better understood by staff in all agencies/departments if the trade and security benefits are to be realized.

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<sup>29</sup> This risk management definition used is adapted from the WTO Trade Facilitation Agreement description of Risk Management within Article 7.4.

Traders from both developing and developed countries have long pointed to the vast amount of “red tape” that still exists in moving goods across borders, and which poses a burden on small and medium-sized enterprises. The WTO’s Trade Facilitation Agreement (TFA) contains provisions for expediting the movement, release and clearance of goods, including goods in transit.

It also sets out measures for effective cooperation between Customs and other authorities on trade facilitation and compliance issues. According to WTO, the FTA will help improve transparency, increase possibilities to participate in global value chains, and reduce the scope for corruption. The concept of a *Trusted Trader* is gaining momentum around the world as the program has been shown to deliver faster clearance of goods across the border while at the same time ensuring security of the country and the community. Establishing compliance credentials with Customs and border agencies requires the development of sound, scientific compliance management programs.

The TNSW could facilitate such a regime by providing analytical tools, that give better and more sophisticated compliance measurements, particularly for the non-Customs Government Agencies.

## 10.2 Government Objectives and Risk Strategies

### 10.2.1 Functions Performed by Agencies

The following table lists the functions typically performed by specific agencies in in order to meet the Government’s objectives assigned to them. The agencies’ names are generic and intended to be illustrative of their function and not the specific name of the agencies in Thailand.

Issue	Key Government Objective	Function
Food Safety	<ul style="list-style-type: none"> <li>Protect public health and safety</li> <li>Protect the reputation of the country’s food industry</li> </ul>	Minimize the potential risk of food-borne illness by ensuring that the quality of internationally traded food meets relevant standards
Biosecurity – Plant Quarantine	<ul style="list-style-type: none"> <li>Protect the country from exotic pests and diseases</li> <li>Protect the country’s reputation in overseas markets</li> </ul>	Minimize the risk of pests and diseases entering and exiting the country by ensuring that national and international standards of plant health are met
Biosecurity – Animal Quarantine	<ul style="list-style-type: none"> <li>Protect the country from exotic pests and diseases</li> <li>Protect the country’s reputation in overseas markets</li> </ul>	Minimize the risk of pest and disease entering and exiting the country by ensuring that national and international standards of animal health and welfare are met
Environmental Sustainability	<ul style="list-style-type: none"> <li>Protect human health and the natural environment</li> <li>Protect the country’s reputation in overseas markets</li> </ul>	Minimize the risk of ‘trading and smuggling of plants, animals’ (terrestrial and aquatic), ‘resources and pollutants’ by ensuring that internationally traded

Issue	Key Government Objective	Function
		goods are legally sourced and meet national and international measures <sup>30</sup>
Health	<ul style="list-style-type: none"> <li>• Protect human health</li> </ul>	Ensure that pharmaceuticals, generic drugs and medications, medical equipment and supplies are legally sourced and conform to national and international public health standards. Their remit may include certain safety aspect of food in general or of certain specific types of food (e.g. baby milk formula) as well as cosmetics and other products that may affect public health.
Immigration	<ul style="list-style-type: none"> <li>• Protect the government's right to determine who may enter, leave or remain in the country on a permanent or temporary basis</li> </ul>	Minimize the risk of people entering, leaving or remaining in the country illegally by ensuring that people who travel across or remain within a country's borders are authorized to do so
Intellectual Property	<ul style="list-style-type: none"> <li>• Protect the rights of owners of trademarks and copyright material</li> <li>• Protect the community from potentially unsafe products (e.g. counterfeit medicines)</li> </ul>	Minimize the risk of trade in counterfeit and pirated goods by ensuring that internationally traded goods do not infringe intellectual property rights, including trademarks and copyright
Revenue Collection	<ul style="list-style-type: none"> <li>• Protect the national revenue</li> </ul>	Minimize the risk of government revenue leakage by ensuring that the correct amount of revenue is paid on imported (or exported) goods
Social and Cultural Values	<ul style="list-style-type: none"> <li>• Protect public health and safety</li> <li>• Protect the cultural artefacts</li> </ul>	Minimize the risk of trading and smuggling of illegal goods by ensuring that people do not carry and, goods, transport carriers and electronic media do not contain anything that is prohibited.

<sup>30</sup> Taken from Gibbs, C. & McGarrell, E & Sullivan, B (2015). Intelligence-led policing and transnational environmental crime: A process evaluation [Electronic version]. *European Journal of Criminology*, Vol. 12(2) 242-259. Retrieved October, 17, 2018, from <http://journals.sagepub.com/doi/abs/10.1177/1477370815571947?journalCode=euca>



Issue	Key Government Objective	Function
Transport Security	<ul style="list-style-type: none"> <li>Protect the supply chain against acts of terrorism</li> </ul>	Minimize the risk of terrorist attacks by ensuring that international and national security standards are met
Safety Standards	<ul style="list-style-type: none"> <li>Protect consumers against injury, illness and death related to unsafe goods</li> <li>Protect a country's reputation in overseas markets</li> </ul>	Minimize the risk of trade in unsafe goods by ensuring that internationally traded goods meet national and international safety standards

Much has been written about risk and compliance management with the central theme of adopting a comprehensive 'whole of government' perspective on improving trade facilitation through better border management. This is because overly bureaucratic border clearance processes imposed by Customs and other border agencies are considered to represent greater barriers to trade than the imposition of tariffs.

Recognizing that Customs is only one of several agencies involved in border processing, research and toolkits provide extensive information on a broad range of international developments and contemporary principles that are applicable to all aspects of border management, irrespective of which agency may have the relevant policy or administrative responsibility.

The practice of most governments is to assign aspects of regulatory responsibility at the border to several different agencies. Each of these agencies has its own specific mandate from government and, taken together, they cover issues as diverse as health, product safety, biosecurity, immigration controls, revenue collection and transport security.

Nevertheless, the fundamental nature of the challenge that each agency confronts is the same, that is, to facilitate the legitimate movement of people and goods while, at the same time, maintaining the integrity of the border by ensuring compliance with relevant legal requirements.

Robust and efficient border management is critical to the cost effectiveness of international trade transactions and the smooth flow of legitimate goods and people from the perspective of both the public and private sectors. And while some agencies may have particularly good procedures in place, the achievement of effective and efficient border management is ultimately a whole-of-government task, requiring the involvement of all government agencies with responsibilities at the border.

The concept of risk is prevalent in all aspects of border management with government policies designed to mitigate a wide variety of risks to policy objectives, including the risks of food-borne illness, pests and diseases entering the country and people entering or leaving a country illegally, government revenue leakage and terrorist attacks.

Below is a summary of the potential risks that the agencies listed above may need to control at the border.

### 10.2.2 Potential Risks

#### ***Food Safety***

Food that is imported into a country is required to meet the relevant food standards of that country. Laws relating to imported food products are designed to ensure public health and safety by minimizing the potential risk of food-borne illness. Similarly, export controls ensure that the quality of a country's exported food meets relevant standards to meet the country's international obligations and protect the reputation of its food industry.

Food safety laws generally include provisions that enable an agency to inspect and analyse imported and exported food to ensure that the required standards are met. Generally, there is also a requirement for commercial traders of certain food products to obtain a permit or certificate prior to its importation or exportation.

### **Biosecurity – Plant Quarantine**

Quarantine controls on imported and exported plants are designed to ensure that national and international standards of plant health are met. Import controls seek to minimize the risk of pests and diseases entering the country, while export controls seek to maintain a country's reputation in overseas markets and ensure ongoing access to such markets. Laws relating to plant quarantine provide agencies with the authority to inspect, test and, if necessary, treat plants and plant products to ensure they meet relevant standards and do not pose a threat of pest or disease. In some countries, live plants may be held at quarantine stations until they are deemed not to represent a pest or disease risk. It is also a common requirement for commercial traders of certain plants and plant products to obtain a permit or certificate prior to their importation or exportation.

### **Biosecurity – Animal Quarantine**

Quarantine controls also apply to the import and export of animals. Import controls are essentially intended to minimize the risk of pests or diseases entering the country, while export controls are designed to ensure that the regulatory requirements of the importing country are met and, in the case of commercial transactions, to maintain a country's reputation in overseas markets. Laws relating to animal quarantine provide agencies with the authority to inspect, test and treat animals to ensure they meet relevant standards and requirements, and to ensure their health and welfare. In many cases, animals that are imported into or exported from a country are placed in quarantine and may only be released once the agency has determined that they are free of disease. Generally, there is also a requirement to obtain a permit or certificate prior to importation or exportation.

### **Environmental Sustainability**

A broad range of domestic and international controls apply to protecting the natural environment and related human health from harm. The threats to the natural environment and human health can come from the 'trading and smuggling of plants, animals' (terrestrial and aquatic), resources and pollutants. A unique challenge in managing environmental controls at the border is distinguishing between legal and illegal goods<sup>31</sup> e.g., fish correctly reported as opposed to unreported fish. Generally, import and export controls on environmental goods are part of an auditable system of monitoring enabling traceability to source or part of an auditable quota management system. This ensures the country meets its international obligations and protect the reputation of its industry. Generally, there is a requirement to obtain a permit or certificate prior to importation or exportation. Relevant provisions include such things as documentary, physical examination, laboratory testing, seizure, destruction, investigation and reshipment.

### **Health**

The work carried out by agencies under the Ministry of Health may overlap in some respects with the work carried out by other agencies described in this section in that it relates to the protection specifically of human health. In this respect it may concerns controls to be exercised over food or animal products or products that may pose a safety risk to a consumer. However, the Health authority in a country is primarily concerned

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<sup>31</sup>(Gibbs, C. et al 2015 )

with the effect on health of any imported pharmaceuticals, particularly ensuring that they are legally sourced from authorized, competent suppliers and are not fakes. This also often covers controls over other chemical substances which may be harmful to health such as cosmetics. The Health authority would also be in charge of controlling the import of medical equipment from day-to-day sanitary supplies to sophisticated machinery, although this work may overlap somewhat or be devolved to a Standards Authority.

Control would typically be exercised through a process of accreditation often involving testing or sampling and the issuing of licenses or permits.

### **Immigration**

Immigration controls apply to people who enter or leave a country, except in circumstances where special arrangements apply, such as borders within the European Union. Such controls are designed to ensure that people who travel across a country's borders are authorized to do so, and to minimize the risk of people entering or leaving the country illegally. They are also designed to ensure that people who can enter a country conditionally meet the conditions under which they are admitted. Immigration laws include provisions to enable relevant agencies to question, search, conduct identity checks, and detain people who intend to cross the country's border. In many cases, travellers who are non-citizens of a country are required to obtain an entry visa prior to or at the time of arrival in the country.

### **Intellectual Property**

A broad range of border controls applies to internationally traded goods, including those relating to intellectual property. These are designed to prevent international trading in counterfeit and pirated goods, to provide protection to the owners of trademarks and copyright material, and to protect the community from potential risks (for example, counterfeit medicines). Laws relating to the protection of intellectual property generally allow agencies to examine and seize commercially imported goods that are suspected of infringing intellectual property rights. Such controls would usually only take effect if the owner of the intellectual property has made a formal request to the agency to protect them from counterfeit, pirated or unauthorized importations.

### **Revenue Collection**

Most countries impose import duties and/or other taxes and fees on imported goods. In some cases, this may also apply to certain exported goods. Laws relating to revenue collection are designed to ensure that the correct amount of revenue is paid on the imported (or exported) goods, and to minimize the risk of government revenue leakage. The powers that enable agencies to enforce revenue laws are extensive. Relevant provisions include such things as documentary and physical examination, detention, seizure, audit and investigation. International traders are required to provide evidence to help inform decisions about the amount of duties, other taxes and fees that are payable.

### **Social and Cultural Values**

All countries enact a variety of laws to regulate or prohibit the movement and/or unauthorised possession of certain commodities, goods and electronic media either based on national policy or as a signatory to international agreements. Laws relating to import and transit goods are designed to ensure public health and safety by minimizing the potential social harm e.g., illegal drugs. Similarly, export controls are designed to ensure that people, goods, transport carriers and electronic media that move across a country's borders are authorised to do so and to minimize the risk of them being used for the carriage of illegal goods departing the country. The powers that enable agencies to enforce social and cultural laws are extensive. Relevant provisions include such things as documentary and physical examination, personal search, detention, seizure, and investigation. Smuggling is generally categorized as a serious criminal offence. Under this

category we would also include trafficking of illegal wildlife species banned under the CITES<sup>32</sup> convention which most countries are a party to.

### **Transport Security**

International transport is highly regulated, and regulatory measures have now been extended to secure the supply chain against acts of terrorism. Relevant regulatory controls are generally exercised at a country's borders and/or at the borders of its trading partners, particularly in relation to air and marine transport and cargo. Such laws are essentially designed to minimize the risk of terrorist attacks. Laws relating to transport security provide agencies with wide-ranging powers to ensure that security standards are being properly observed and to verify the validity and integrity of shippers and other members of the international trading community.

### **Safety Standards**

Safety standards apply to a wide range of products that are internationally traded. Their purpose is to protect consumers against injury, illness and death related to unsafe goods. Export controls are designed to ensure that the regulatory requirements of the importing country are met, and to maintain a country's reputation in overseas markets. Relevant laws enable agencies to screen, examine and test goods to ensure that they meet product safety standards, and to ensure that their importation or exportation is not prohibited. Safety standards may not be restricted to unsafe design features but may also apply to nonphysical aspects of a product such as mandatory warnings, information and instructions.

## **10.2.3 International Obligations**

The Government of Thailand notified the WTO of its commitments to the TFA on 23 July 2014. In respect to Article 7.4 *Risk Management*, this was notified as Category A, i.e., risk management is currently fully implemented across all agencies and therefore Thailand considers itself compliant with this commitment.

This can be said to be accurate to some extent but, certainly, it is not accurate for all GAs involved and not to the extent that could be made possible by leveraging the facilities of a Single Window as described in the next sections.

## **10.3 Model for Risk Management in a National Single Window**

### **10.3.1 Overview**

A National Single Window (NSW) does not change the existing mandates of regulatory agencies. It does, however, create opportunities for how cross-border agencies may be able to identify risk and compliance across the regulated population. By digitizing cross-border information (that is the information in application forms, certificates, reports and registers), and storing it so that it is easily accessible, the NSW creates the foundation for real-time assessment, management and response to risk. Further, it can inform audits, investigations and enquiries providing traceability and enabling compliance to be assessed.

To realize the benefit of digitizing cross-border information to enhance the managing of border related risks, agencies without existing formalised risk and compliance operating models will need to design, develop and

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<sup>32</sup> CITES: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973, 1979,1983

transition to a new fit-for-purpose operating model in readiness for the NSW and participate in the NSW detailed design and implementation processes.

This chapter describes the risk and compliance management opportunities enabled by the NSW and sets out the foundations for an ideal risk and compliance operating environment suitable for realising the NSW benefits.

### 10.3.2 Assumptions

For the purposes of this chapter, it is assumed the NSW is:

- Consistent with international standards and arrangements of prevailing good practice<sup>33</sup>
- Consistent with international agreements thereby enabling government agencies to meet international commitments and obligations

### 10.3.3 NSW Risk Management Environment

The opportunities for better management of border risks enabled through the NSW environment include:

- Online access to certificate, licensing, permits and registration data and other related data for analysis
- Online access to create, amend and maintain selectivity criteria in real-time for important and/or higher risk cross-border trade transactions
- Ability to set the rate of random selections
- Automated system notation of compliant low risk trade transactions for personnel to apply differentiated or simplified processing
- Online access to information to inform compliance initiatives and assess levels of compliance
- Online access to information for analysis on the changing nature of risks being encountered and identification of new emerging risks
- Online access to information to inform audits, investigations and enquiries into traceability
- Online access to a database of the results of selectivity transactions selected by risk treatment type any officer-initiated escalation of treatment type, and the findings according to treatment type. This database also would be used by the GAs' risk & compliance management analysts.

## 10.4 Risk Management Functional Requirements

The NSW should comprise a *Risk Management* module that utilizes analytical data and reporting from a risk database to allow authorized GAs' officers to define transactional filters which will be applied to each CLPA application through a selectivity feature of the NSW.

The objective of the NSW's *Risk Management* module is to determine a risk rating for each CLPA application, based on data set by each government agency, and to recommend or apply automatically:

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<sup>33</sup> For example, with the UN/CEFACT definition in Recommendation No. 33 as a platform for single submission of electronic data

- (a) a suitable streamlined processing path for the recipient GA with reduced workflow process steps (for those traders with a history of good compliance) or highlighting particular areas of the transaction for further assessment or investigation (for that trade that is assessed as a risk) for all pre-clearance CLPA applications under process; and
- (b) a suitable channel approach (e.g., red, yellow and green channels) for goods clearance of CLPAs.

A randomizing element would also be included to provide a level of feedback concerning the effectiveness of the selectivity criteria and based on statistically valid random sampling techniques. Additionally, the risk module would provide the functionality to allow officers to record the results of a particular risk profile so that its effectiveness could be determined through further reporting facilities

The following diagram illustrates the process of Risk Management in the NSW.

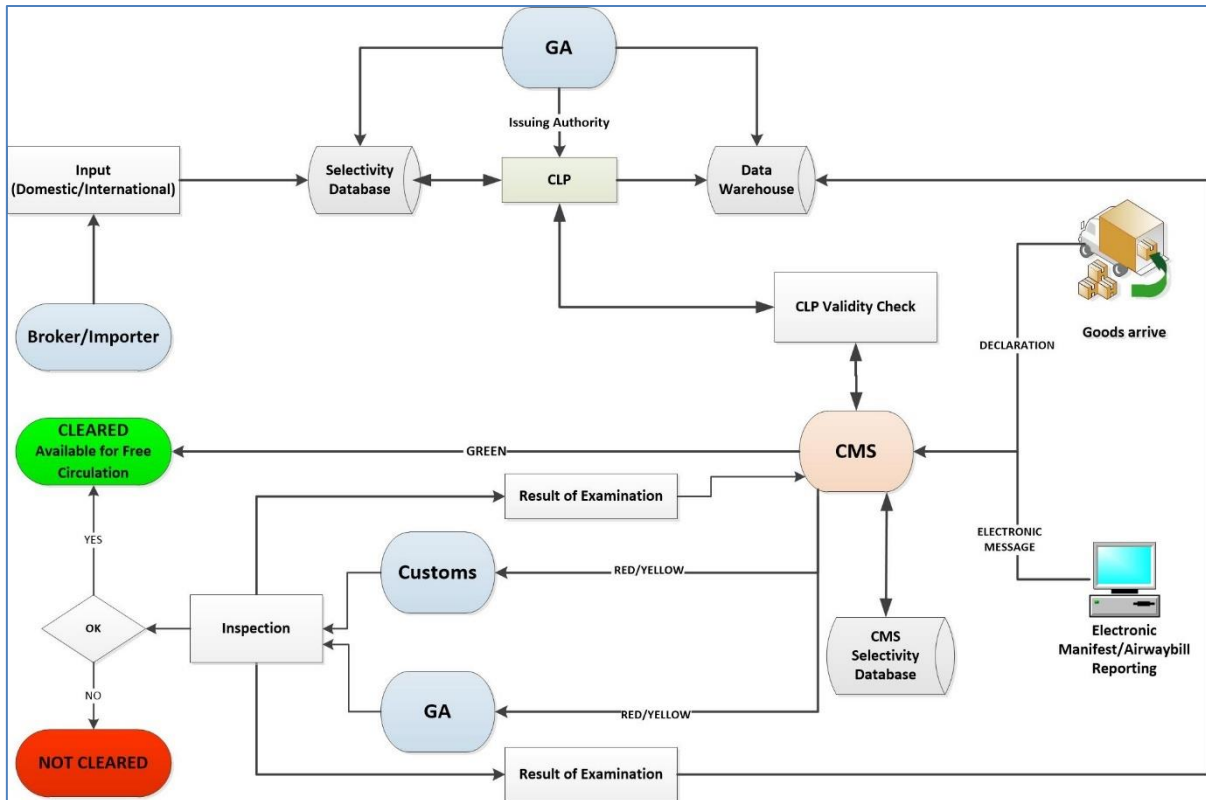


Figure 8: NSW Environment Risk & Compliance Management Information Flow Overview

#### 10.4.1 Regulatory agencies using NSW for Certificate, Licence and Permit processing

The regulatory agencies that issue CLPA may take advantage of the following facilities.

- Apply selectivity criteria to profile and target specific applications for Certificates, Licenses and Permits within the NSW
- Set random selection for assurance purposes
- Record the outcome of inspections
- Access laboratory analysis undertaken as part of the issuance process
- Access NSW stored agency CLPA and Registration data online for monitoring, review, reporting, analysis, audit, investigation and traceability purposes
- Review, hold, suspend and/or revoke previously issued agency CLPAs

- Can link CLPAs with related transactions
- Can link border import and export inspection and diagnostic reports to specific CLPAs or registrations

#### 10.4.2 Regulatory agencies with own systems for Certificates, Licences and Permits

Those agencies that already operate their own enterprise system for the issuance and management may connect their systems with the NSW and take advantage of the following facilities to enhance their systems.

- May apply selectivity on submitted data to NSW with potential to pass a message to the agency own system to alert them to risk
- May access the NSW for verifying validity of CLPAs
- Stored NSW CLPA data is accessible for post issuance/post clearance for monitoring, review, reporting, analysis, audit, investigation and traceability purposes in accordance with information sharing agreements

#### 10.4.3 Regulatory agencies with systems for import, export and transit/transshipment declarations

Regulatory agencies with systems for import, export and transit/transshipment declarations, e.g., Customs:

- May apply selectivity criteria against import, export and transit/transshipment declarations for own and other regulatory agencies in accordance with information sharing agreements or directives
- May connect to the NSW to verify the validity of declared CLPAs prior to clearance of goods
- Stored data is accessible for post issuance/post clearance for monitoring, review, reporting, analysis, audit, investigation and traceability purposes in accordance with information sharing agreements

#### 10.4.4 Private Sector Compliance

NSW can recognise authorised traders approved under Government Authorised Operator schemes.

Approved Regulatory Officers can access the NSW to view CLPAs and request regular and ad-hoc reports.

#### 10.4.5 Easier Risk Targeting

**Targeting** is the activity of finding targets – specific goods or categories of goods, transport conveyances, traders, origins or transit points of goods, ingredients or materials used in manufacturing goods, method of extraction for natural resources - for border activity based on risk profiles, risk analysis or known risk situations<sup>34</sup>. Through effective targeting, agencies can focus resources on the areas of greatest importance.

The NSW makes it easier for agencies to analyse transaction data, compliance data and link this knowledge to other sources of information, e.g., technical knowledge, international notifications for informed risk-based decision making. Access to NSW transaction data will be online and in real time for standard reporting for approved and trained users and the NSW Helpdesk facility will assist in running ad-hoc reports.

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<sup>34</sup> Definition of 'targeting' adapted from Revised Kyoto Convention Chapter Six

#### 10.4.6 Using Selectivity Criteria

Within the NSW the selectivity module functions as a filter through which applications for CLPA must pass. If the data elements of the application correspond to those of the selectivity criteria the NSW will attach information to the application describing the nature of the risk and recommended actions to be taken.

**Selectivity** is the identification of relevant criteria/parameters/data in CLPA applications or cross-border declarations to assist in finding specific targets.<sup>35</sup> Any information collected can be used as the basis for selectivity criteria. Therefore, for cross border trade this means each data element in an application for CLPA or in any cross-border declaration can be used either individually or in combination e.g., importers name, country of export, area of production, intended use of the product, value, product code, HS code, etc.

There are two main categories of selectivity approaches within the NSW and each approach is useful depending on the situation and the result required. The two main approaches are:

a) Selection-based approach

To select declaration based on a pre-determined criterion being either a single element or a combination of declaration data elements

b) Random approach

To select declarations whereby all declarations have an equal chance of being selected

The Random approach is particularly useful for measuring compliance and determining the degree to which traders, carriers, goods, etc. conform to the rules and procedures. To be effective the Random approach should be based on statistically valid random sampling techniques. The Random approach can be used to assess the effectiveness of implemented risk-based profiles or selectivity criteria.

To effectively utilize the Selection-based approach personnel must have good knowledge of the selectivity criteria process within the NSW and supporting policy must be in place setting the standards, approval process and review period. Access to create, maintain, amend and end selectivity criteria will be available to agency approved and NSW trained users.

#### 10.4.7 Greater Focus on Compliance

In developing a compliance-based system, regulators must understand the degree to which the company:

- knows of and understands the rules;
- is willing to comply; and
- can comply.

Regulatory compliance is all about compliance with the law. Regulators have an obligation to enforce the law, but also ensure that people are aware of their rights and responsibilities. Initiatives such as a *Trade Information Portal* (TIP) provide a platform for importers and exporters to access current laws, regulations, directives and procedures. The concept of TIP is subject of an international good practice recommendation

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<sup>35</sup> Definition of 'selectivity' is taken from Revised Kyoto Convention Chapter Six



issued by UN/CEFACT, *Recommendation No. 38*, which complements *Recommendation No. 33* on Single Window, and describes how to take advantage of the synergies between TIP and NSW<sup>36</sup>.

There are many ways compliance with regulatory requirements can be managed. While border agencies have a fundamental responsibility to ensure that statutory requirements are met, the way this is achieved is often quite flexible. For example, the law may require that certain goods may only be imported under licence. However, the way the licensing arrangements are implemented by the administering agency is often open to administrative discretion. A licence may, for example, be issued on a transaction-by-transaction basis, a periodic basis (e.g. six or twelve months) or issued for an indefinite period provided certain conditions are met.

The distinction between statutory and administrative requirements is an important one, particularly in the context of organisational flexibility and change management. This is because the potential for change, the processes and stakeholders involved in effecting change and the timeframe in which change may be achieved differ markedly depending on whether the requirement is for a change to statutory provisions or to administrative procedures.

There is always an element of risk in facilitating the movement of goods and persons across international borders. The extent of controls to ensure compliance with the laws and regulations which border agencies are responsible for enforcing should be proportionate to the level of assessed risk.

To remain effective, any system of risk management must test the assessment of previously identified risks and be flexible enough to reflect newly identified risks. Evaluation of the effectiveness of risk management should be undertaken regularly at all stages. The success rate is an important criterion for evaluating the effectiveness of the risk profiles. Evaluation and review should be carried out by border agencies through a *regular compliance measurement process*.

Compliance measurement is an approach used by many border agencies to assess how well traders are doing in complying with national laws and regulations. Compliance measurement is the basis of establishing a *Trusted Trader Program*, part of the revised WCO's SAFE Framework of Standards.

Compliance models in the world of border management are often based on an international standard<sup>37</sup> and can be represented as in *Figure 9* below. The picture can be explained as follows:

At the base of the pyramid are the foundational elements to create a climate that encourages compliance within the public. At the foundation of any effective border management regime must be the establishment of an appropriate legislative framework. This framework must provide the necessary basis in law for the achievement of the range of administrative and risk management strategies that the border agency has chosen to adopt.<sup>38</sup> 'Client Service' comprises the activities aimed at ensuring that the public understands the need for compliance and how to achieve it without accidentally falling into non-compliance. 'Compliance Assessment' comprises the activities, based on risk management principles, designed to assess the success of the strategies above in terms of compliance achieved. This activity will allow continuous refinement of

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<sup>36</sup> Recommendation No. 38, Trade Information Portals, Geneva 2021, Section II, G - <https://unece.org/trade/publications/recommendation-ndeg-38-trade-information-portals-ecetrade465>

<sup>37</sup> ISO 19600:2014 provides guidance for establishing, developing, implementing, evaluating, maintaining and improving an effective and responsive compliance management system within an organization.

<sup>38</sup> Adapted from *Border Management Modernization*, World Bank, 2011, page 108

the strategies. At the top of the pyramid are the actions aimed at tackling non-compliance where this has been found to be ingrained or deliberate.

The objective of compliance management is to ensure that most traders' behaviours fall towards the bottom of the pyramid, thus being manageable through education, assistance, consultations are other 'soft' strategies.

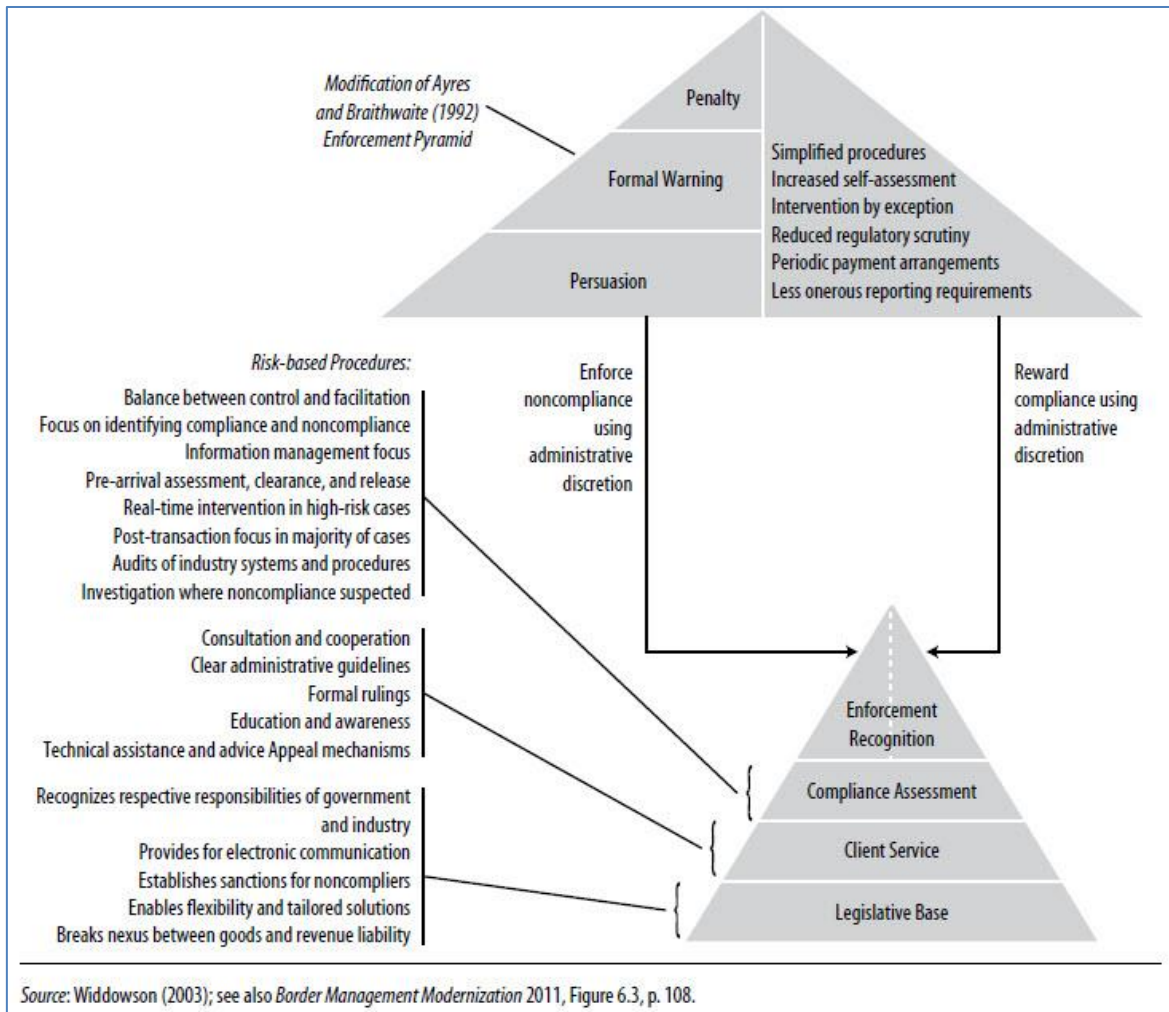


Figure 9: The Compliance Pyramid<sup>39</sup>

#### 10.4.8 Data Elements for Risk Management

The data used by GAs, either in systems or on manual forms, should be brought together into a single data set in order to create a harmonized list that forms the basis of the NSW Harmonized Data Model (HDM). To support better risk and compliance management the NSW digitizes CLPA and import and export declarations and automates the application of risk-based selectivity criteria to be applied to all transactions. Therefore,

<sup>39</sup> Widdowson, 2003 – reproduced from *Border Management Modernization*, World Bank, 2011, Chapter 6, Widdowson and Holloway

it is important the NSW HDM includes data elements that in combination facilitate risk-based decision making.

#### 10.4.9 Legal Implications

Border agencies must be able to share information/data relative to the clearance and release of goods crossing the international border.

Greater sharing of the data held by government agencies can lead to:

- more efficient and effective government services
- better informed government programs and policies
- greater transparency around government activities and spending
- economic growth from innovative data use, and
- cross-sectoral research solutions to current and emerging social, environmental and economic issues.

Data protection legislation should allow border agencies to share data to be used only for a specific purpose.

This might include data to:

- inform government policy making
- support the efficient delivery of government services or government operations
- assist in the implementation and assessment of government policy, and
- assist research and development with clear and direct public benefits.

The most likely impediment to successful implementation of a country's NSW will be learning how to work with other agencies to take full advantage of the data being collected by each organization. "Coordinated Border Management" is the future trend in the context of seeking greater efficiencies over managing trade and travel flows, while maintaining a balance with compliance requirements<sup>40</sup>.

There may, however, exist legal impediments to the free sharing of operational information between agencies. These impediments need to be identified, analysed and, if appropriate, removed. This issue should be addressed as part of a comprehensive review of the legal framework underpinning the NSW.

### 10.5 Change Management

#### 10.5.1 New Processes within NSW

To implement risk management within the NSW and optimise the automation of CLPAs the following new processes should be developed for use by GAs:

- Create Selectivity Criteria
- Review Selectivity Criteria
- Amend Selectivity Criteria

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<sup>40</sup> Coordinated Border Management Compendium, World Customs Organization, 2015

- Extend Selectivity Criteria
- End Selectivity Criteria

### 10.5.2 Affected Parties and Types of Change

The impact of the NSW will differ between agencies depending on several factors such as the current level of automated or manual processes, formalised management of risk or risk managed by officer experience and the level of collaboration between agencies. For regulatory agencies the NSW creates the opportunity to transition from processing applications or clearances to:

- Creating initiatives with the private sector to increase voluntary compliance
- Dynamic management of risks in the cross-border trade processes
- Using analysis of trade data for informed risk-based decision making
- Focusing resources in the areas of greatest importance
- Collaboration and coordination between agencies on matters of risk and compliance

To move towards a risk management environment, initiatives must be planned as part of the agency's overall readiness plan with the following aims in sight:

- To realize the business benefits by changing roles and responsibilities and developing skills to best leverage the ICT components that make up the NSW system;
- To minimize any potential negative impact on the agency's services, the traders regulated by the agency, international trade arrangements and the agency's personnel during and after implementation of the NSW system;
- To familiarize all staff with the risk and compliance operating model and develop specific risk targeting, information analysis and compliance management competencies necessary to support the future environment;
- People affected by the changes understand the rationale and where possible have input into the design and delivery of the system and processes.

The NSW design improves the targeting of risk and generates efficiencies for all participating organisations. This will result in resource changes in specific areas of operation, new policies to support the risk and compliance operating model and training for impacted agency personnel and traders. Implementing new ICT and a new risk and compliance operating model takes some time for staff to be familiar with the new technology and the new business processes. Therefore, in addition to the changes staff and traders need to make the success of NSW risk and compliance model is dependent on senior executive leading the changes for the future operating environment.

### 10.5.3 New Risk and Compliance Processes within NSW

To implement risk and compliance management within the NSW and optimise the automation of CLPAs the following new processes should be enabled for use by GAs.

#### **Selectivity Function**

- Approve Selectivity Criteria (manual process)
- Create (Code) Selectivity Criteria within the NSW Selectivity Module
- Review Selectivity Criteria using NSW reporting function
- Amend Selectivity Criteria within the NSW Selectivity Module

- Extend Selectivity Criteria within the NSW Selectivity Module
- End Selectivity Criteria within the NSW Selectivity Module

**Reporting Function**

- Recording results of activities with a focus on reporting non-compliance and non-conformance within the NSW (all CLPA NSW users)
- Recording reasons for decisions to reject, hold, suspend or revoke
- Obtaining reports within the NSW Reporting Module
- Requesting ad-hoc reports from the NSW Helpdesk

**New Risk and Compliance Processes to Support NSW Selectivity**

- Targeting Function (a NSW support function)
- Analyze NSW transaction data and other agency specific risk information
- Develop, review, amend and risk profiles
- Communicate risks and findings
- Evaluate results
- Compliance reporting

**10.5.4 New Functions and Responsibilities**

People are an integral part of the NSW. Users of the NSW and consumers of NSW information must be prepared and developed to meet the changing roles and opportunities provided by this new system. The following table provides a summary of the risk and compliance functions and responsibilities within the NSW CLPA function for which an appropriate program of change, including building awareness and training, must be planned.

**Risk & Compliance Functions & Responsibilities in the NSW Environment**

Current Function (Role)	NSW CLPA Function	New NSW Risk Responsibilities	Functions Ceased
	Selectivity criteria is entered into NSW/Agency System	Analyst enters approved selectivity criteria into NSW	
Receives application and determines all information is present	Application is automatically verified the information is in the correct format and complete within the NSW		Receiving paper based applications at an office
Receiving Officer receives the application, reviews the information and makes recommendation	Application is automatically compared against selectivity criteria within the NSW	Receiving Officer receives the application on the system and responds to identified risk transactions in accordance with policy	
Write Inspection Report	Enter Inspection Results	Inspection officers must enter information into the NSW and record any non-	

Current Function (Role)	NSW CLPA Function	New NSW Risk Responsibilities	Functions Ceased
		compliance, non-conformance or other information assessing the future risk	
Attach Diagnostic Results	Enter Diagnostic Results	Laboratory technician enters the results of Laboratory Diagnostics and attaches a copy of the report (if applicable)	
Writes reasons for decisions	Recording reasons for decisions to reject, hold, suspend or revoke	Decision maker must enter the reason for the decision	
	Run standard report	Analyst enters parameters to run standard reports	
	Request ad-hoc risk, compliance or business indicator report from the NSW Operator	Analyst may receive requests for ad-hoc reports or determine own ad-hoc report and request the report from the NSW Helpdesk	
	Manager query/view function	Manager monitors NSW activities and can review all agency applications, approvals, selectivity criteria and reporting	
	Import and export declaration is automatically verified the information is in the correct format and complete within the NSW		
	Import and export declaration is automatically compared against selectivity criteria within the NSW	GA receiving officer receives the import or export declaration, at the same time as Customs, and responds to identified risk transactions in accordance with policy	
	Enter examination results	Officers enter the results of document examination and/or physical inspection (includes any applied treatment) into the NSW and records any non-compliance or non-conformance	

Current Function (Role)	NSW CLPA Function	New NSW Risk Responsibilities	Functions Ceased
	Enter Laboratory results	The laboratory technician enters diagnostic results and uploads relevant reports	
	Approving GA clearance or recording reasons for decisions to reship, destroy or seize	Decision maker reviews the examination and laboratory results and provides GA clearance or enters the reason if clearance is not given	
	NSW is updated with the GA clearance or non-clearance decision		

### 10.5.5 Impact on Workplace Roles and Functions

Both the volume of cross-border trade transactions and the complexity and diversity of the risks being managed within these transactions by regulatory agencies differ significantly between agencies. Given the differences between regulatory agencies in the risk environment the following matrix has been developed as a guide for decision-makers to determine the scope and nature of resources need to utilise the functionality available within the NSW.

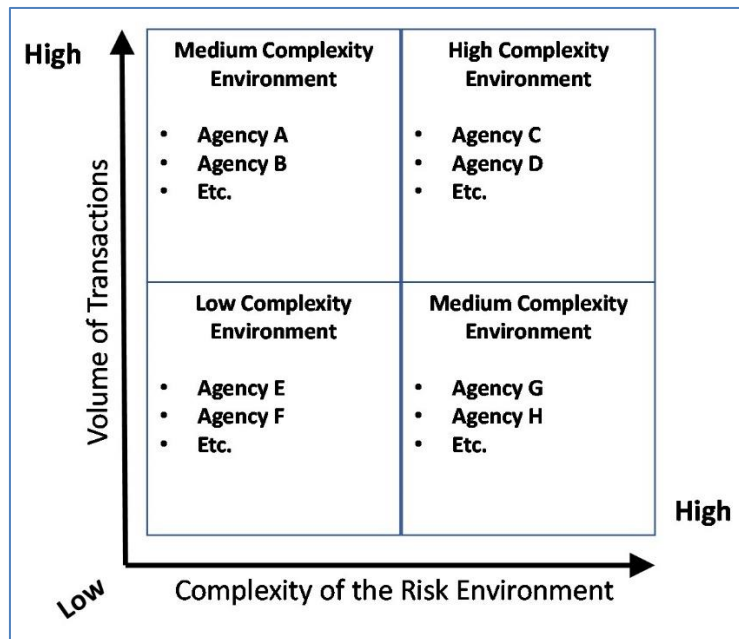


Figure 10: Regulatory Risk Environment Volume Complexity Matrix

### 10.5.6 Self-Assessments of Readiness

To further assist decision-makers at national level and within each agency, this section contains example tools to assess an agency’s level of readiness to undertake a transition to risk management.

## **Risk Management Competencies**

The table below is an indicative *Risk Management Competencies Table* which describes the ideal risk management skills and competencies needed to successfully implement risk and compliance into the NSW operating environment.

**Table 1: Indicative Self-Assessment**

<p><b>Low Complexity</b> <b>Within an existing role</b></p>	<p><b>Medium Complexity</b> <b>May be within existing role/s or a specific role</b></p>	<p><b>High Complexity</b> <b>Specific role and work group</b></p>
<ul style="list-style-type: none"> <li>• Technical skill in developing, creating and maintaining selectivity criteria in NSW<sup>(a)</sup></li> <li>• Provides accurate and timely information to decision-makers and staff involved in the CLPA process<sup>(b)</sup></li> <li>• Can write clearly and succinctly</li> <li>• Maintains confidentiality of business information</li> </ul>	<ul style="list-style-type: none"> <li>• Technical skill in developing, creating and maintaining selectivity criteria in NSW<sup>(a)</sup></li> <li>• Technical skill in analysis of data and information<sup>(b)(c)</sup></li> <li>• Provides accurate and timely information to decision-makers and staff involved in the cross-border processes</li> <li>• Can communicate clearly and succinctly in writing and verbally</li> <li>• Maintains confidentiality of business information</li> <li>• Makes good decisions based on analysis, experience and judgement</li> </ul>	<ul style="list-style-type: none"> <li>• Technical skill in developing, creating and maintaining selectivity criteria in NSW<sup>(a)</sup>/Agency System</li> <li>• Technical skill in analysis of data and information<sup>(c)</sup></li> <li>• Technical skill in developing risk profiles and undertaking risk targeting</li> <li>• Provides accurate and timely information to decision-makers and staff involved in the cross-border processes</li> <li>• Can communicate clearly and succinctly in writing and verbally</li> <li>• Maintains confidentiality of business information</li> <li>• Makes good decisions based on analysis, knowledge and judgement</li> <li>• Service Focus – acts with the information users in mind, maintains effective relationships</li> </ul>
<p>(a) Skills and competence to be developed with NSW training</p> <p>(b) Awareness of the data that can be obtained from NSW and competence in using agency specific standard reports to be developed with NSW training</p> <p>(c) Awareness of the data that can be extracted from the NSW for analysis is to be developed with NSW training.</p>		

Common to all regulatory agencies operating under a risk and compliance operating model, regardless of either volume or complexity, is the focus and responsibilities related to information. In an agency everyone



has a role whether it is information handling, analysis, information collection, coordination information collection or management.

Likewise, traders and their representatives are expected to take more responsibility for the accuracy and quality of information supplied and when in doubt traders are encouraged to seek guidance from the regulatory agency.

***Transitioning to a risk and compliance operating model***

To transition to the risk and compliance operating model the following table broadly describes a suite of activities decision-makers, together with the National Logistics Development Committee and the NSW Sub-committee, could address. The activities broadly fit into two categories:

- Readiness Activities undertaken by agencies to develop competence in the risk and compliance management and able to be undertaken irrespective of the NSW
- NSW Activities undertaken in conjunction under the NSW Program

The extent of change and the scope of transition activities varies between the various organisations affected. Therefore, the change management needs to address this variability in a way that is fit-for purpose for each implementing agency without compromising the mandate, accountability and responsibilities of the agency.

**Table 2: Indicative Initiatives for Transitioning to a Risk and Compliance Operating Model**

<b>Transition Initiatives</b>	<b>Low Complexity Environment</b>	<b>Medium Complexity Environment</b>	<b>High Complexity Environment</b>
Setting a risk and compliance baseline, from a policy perspective, for participating agencies new to risk and compliance management  Readiness Activity	Risk Profile Report (Agency Specific)	Risk Profile Report (Agency Specific)	Risk Profile Report (Agency Specific for agencies undertaking own activities)  Risk Responders Report (For agencies undertaking activities on behalf of others)
Establish the Risk & Compliance Vision	Establish a simple vision and strategy	Establish a simple vision and strategy	Establish a simple vision and strategy
Develop the risk and compliance operating model  Readiness Activity	Risk and Compliance Policy  Information security standards	Risk and Compliance Policy, Procedures, Roles & Responsibilities  Information security standards	Risk and Compliance Policy, Procedures, Roles & Responsibilities  Information security standards
Develop 'fit for purpose' risk and	Risk & Compliance Policy Briefings (all)	Risk and Compliance Briefings (all)	Risk, Intelligence & Compliance Briefings (all)

<b>Transition Initiatives</b>	<b>Low Complexity Environment</b>	<b>Medium Complexity Environment</b>	<b>High Complexity Environment</b>
compliance functional and technical skills Readiness Activity	Risk management awareness training  Computer skills e.g. MS Word, MS Excel  Level 1 information analysis	Role specific risk & compliance management training  Information & data analysis  Risk Profile development  Reporting, briefing, presentation training	Role specific risk & compliance management training  Information, data and intelligence analysis  Risk Profile development  Reporting, briefing, presentation training
Collaborating and Coordinating to support the risk and compliance operating model Readiness activity	Information sharing agreement	Information sharing agreement	Collaboration and coordination agreement
Communicate for buy in <sup>41</sup> Readiness Activity & NSW Activity	Trader briefings on expectations  Regular staff communication  Compliance letters to promote voluntary compliance  NSW - Review relevant international arrangements  NSW Communication Plan	Trader briefings on expectations  Regular staff communication  Risk Briefings for staff  Compliance letters to promote voluntary compliance  NSW - Review international arrangements  NSW Communication Plan	Trader briefings on expectations  Regular staff communication  Risk Briefings for staff  Custom broker standards  Compliance briefings to industry groups  NSW - Review international arrangements  NSW Communication Plan
Developing skills to use NSW NSW Activity	Information, data and system security policy  Using NSW (role specific)	Information, data and system security policy  Using NSW (role specific)	Information, data and system security policy  Using NSW (role specific)

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<sup>41</sup> Step 4 of Kotters 8-Step Model for Change

Transition Initiatives	Low Complexity Environment	Medium Complexity Environment	High Complexity Environment
	NSW Selectivity Criteria NSW Reporting	NSW Selectivity Criteria NSW Reporting	NSW Selectivity Criteria NSW Reporting

### 10.5.7 Government Agencies' Self-Assessment of Readiness

The following is an example of a self-assessment matrix by each agency to determine their state of readiness and their needs to implement the strategy.

**Table 3: GA Self-Assessment Constraints to Adopt Risk and Compliance Management in the NSW Environment**

Financial & Equipment Resources Need	People & Organisation Design Need
<ul style="list-style-type: none"> <li>Financial support for NSW operating environment</li> <li>Equipment support (network, computer devices, equipment for inspection)</li> <li>Electricity supply</li> </ul>	<ul style="list-style-type: none"> <li>More staff</li> <li>IT training for staff and agents</li> <li>Data management and analysis training</li> <li>IT technical and technical assistances</li> <li>Inspection teams at all points of entry</li> </ul> <p>Targeted capability development of officials</p>
Operational Processes and Procedures Need	Stakeholders – Private Sector, Other Government Agencies & International (incl. Trading Partners) Need
<ul style="list-style-type: none"> <li>Reengineer current processes to operate in an electronic environment</li> <li>New SOPs</li> </ul>	<ul style="list-style-type: none"> <li>Private sector to be trained in NSW and regulatory requirements</li> <li>Awareness briefings and familiarization with new processes, procedures and standards</li> <li>Fumigation services could be undertaken by the private sector</li> <li>MOUs and legal basis for data sharing</li> <li>Inter-Department communication in managing cargo risks and more systematic approach to address communication/coordination</li> </ul>
Legal, Communication & Other	
<ul style="list-style-type: none"> <li>Implementing risk management in the context of NSW should be supported by legislation</li> </ul>	

- Laws to be amended to support electronic environment
- Legal statement regarding the levels of compliance should be formulated in a clear manner and make both public and private sector aware
- Implementation challenge as the IT technicians do not know the government process flow and the government officers do not know the IT systems well
- Department needs a strategy to recruit, train, and compensate staff with ICT literacy, and clear instruction to implement.
- Roadmap for NSW specific to each GA and developed with the GA

### 10.5.8 Contribution to the Realization of Benefits

The risk and compliance operating model contributes to realising both measurable and intangible benefits. Focusing on which benefits an agency is most intent in achieving will assist in tailoring the risk management approach.

**Table 4: Risk Management Contribution to Realizing NSW Benefits**

NSW Benefits	NSW Risk Management Contribution to Realising the Benefit
Enhanced management of border risk for trade	<ul style="list-style-type: none"> <li>• NSW Selectivity Module</li> <li>• NSW provides officers with the risk-based rationale for CLPA applications that match selectivity criteria</li> <li>• Reasons for decisions to reject, hold, suspend or revoke CLPA are recorded within the NSW and able to be analyzed</li> <li>• Inspection and Diagnostic reports are able to be attached to applications</li> <li>• Trained staff able to run NSW standard reports and request ad-hoc reports</li> </ul>
Improved agency efficiency and value for money	<ul style="list-style-type: none"> <li>• Focus resources to areas of greatest importance (reduction in administrative tasks for refocusing on identifying and responding to risk)</li> </ul>
Reduce costs for compliant traders	<ul style="list-style-type: none"> <li>• Risk and Compliance operating model to support NSW</li> </ul>
Ease of access to information for government agency decision making	<ul style="list-style-type: none"> <li>• NSW standard and ad-hoc reports are an input into risk and compliance operating model for participating agencies</li> <li>• NSW selectivity criteria and results is accessible online</li> </ul>

NSW Benefits	NSW Risk Management Contribution to Realising the Benefit
Trade facilitation benefits for compliant traders	<ul style="list-style-type: none"> <li>• Access to transaction information as in an input for determining trader compliance</li> <li>• Selectivity and risk profiles within the NSW</li> </ul>
Supports improved market access by positioning Thailand for ASEAN and country to country data sharing	<ul style="list-style-type: none"> <li>• Increases the traceability of the cross-border processes for controlled goods</li> </ul>
Processing trade documentation quicker and increasingly in advance of arrival	
Facilitates coordination between CLPA agencies and Customs	<ul style="list-style-type: none"> <li>• National Data Model facilitates matching and sharing of data for risk analysis purposes</li> </ul>
Ease of traceability of cargo for post-clearance investigation or review through online access to NSW	<ul style="list-style-type: none"> <li>• NSW standard and ad-hoc reports</li> <li>• NSW trained personnel within participating agencies</li> <li>• Risk and compliance trained personnel within participating agencies</li> </ul>

## 11 Institutional Basis

Under the current arrangement, Customs is the entity responsible for the operation of the TNSW. The TNSW comes under the sphere of responsibility of the *National Logistics Development Committee* (NLDC) which is long established and very active. In 2017, the NLDC established the *Sub-committee on National Single Window Administration and Development* (the “*TNSW Sub-committee*”) to provide policy implementation and oversight of the TNSW. The sub-committee is chaired by Customs and comprises representative from all the government stakeholders of the TNSW.

Pursuant to the above, Customs established, under the TNSW Sub-committee, a working group and sub-working group to encourage and support simplification of processes and data interchange through the TNSW system.

These arrangements were duly agreed by the NLDC and ratified by Cabinet.

In the TNSW concept of operation, all the data processed and created by GAs is submitted to *e-Customs*, the enterprise Customs Management System (CMS) operated by Customs, and is then matched to Customs declarations also submitted to e-Customs.

Until 2020, while the TNSW was being operated by Customs, the architecture was such that the data exchanges would be point-to-point between the GAs’ systems and *e-Customs* for CLPA data and point-to-point between three VAS systems and e-Customs. Traders could choose to submit Customs declarations through the networks provided by one of three VASs. The three VASs, at the time, were CAT Telecom (a state owned company), Netbay Public Company Limited and Trade Siam Company Limited, a joint venture company comprising various private and public sector partners.

This arrangement is illustrated in the following picture.

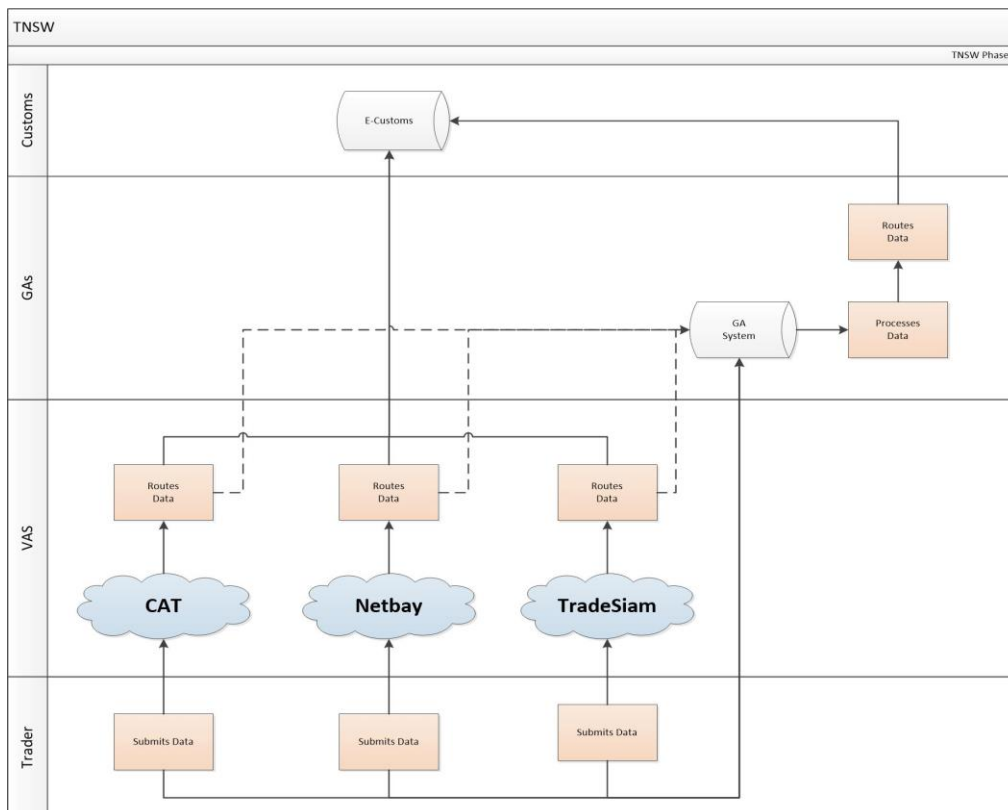
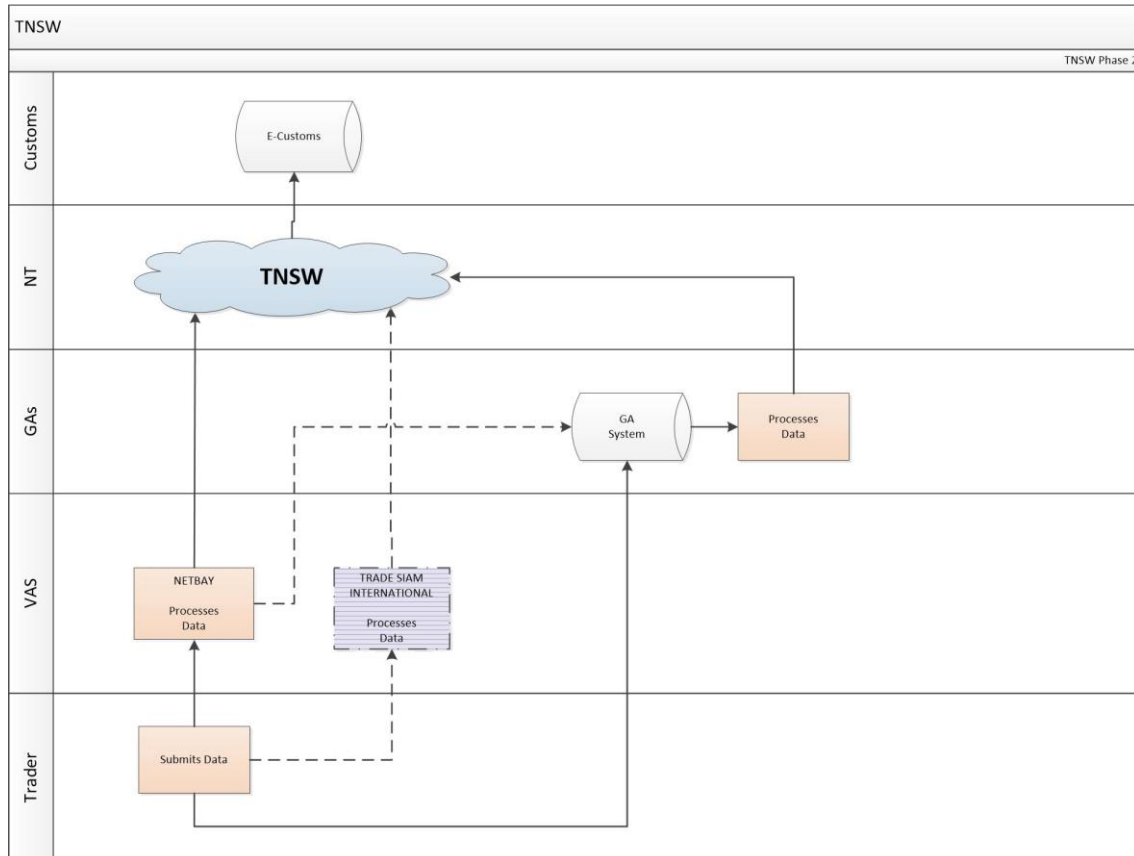


Figure 11: TNSW architecture before 2020

In 2020, CAT merged with TOT Public Company, another state-owned telecom company, to form National Telecom (NT). Customs appointed NT as the sole operator for the TNSW, meaning that any transactions forming part of the TNSW must be routed via its network gateway. This decision was also approved by the NLDC and ratified by Cabinet.

However, NT only provides the message routing service for the TNSW, not any user front-end for the creation and transformation of messages. Therefore, one remaining VAS, Netbay, continues to operate the service to create and send Customs declarations to e-Customs, but they have to do it via the network provided by NT, as illustrated in *Figure 12* below. Trade Siam was dissolved and re-formed as Trade Siam International. Trade Siam International is actively seeking to promote value-added opportunities to provide services related to TNSW but it is not clear whether they currently conduct any business.

The current arrangement is illustrated in the following picture.



*Figure 12: Current TNSW Architecture*

The current arrangement has added an additional layer of processing (VAS-to-NT) which does not appear to have any real functional advantage in relation to the earlier arrangement, although it could be seen to be effectively a way for Customs to outsource the technical operation of the TNSW to NT. This being the case, however, in order to avoid conflicts or redundancies, the rights and obligation of NT as the operator and any demarcation of what services may or may not be offered by the various parties should be clearly stipulated in legislation and reflected in operating contracts and SLAs between the entities.

The Mission Team understands that aspects of the licensing agreement between Customs and NT, which came into effect in December 2020, are still currently being re-evaluated and discussed by the two parties. The Mission Team was not given the opportunity to review the agreement as it is considered confidential. However, it is clear that, as this agreement is not firmly in place specifying the rights and obligations of the operator (NT), the consequence is that there are no SLAs in place determining the levels of service the operator is expected to provide and what remedies service providers (VAS) and end-users can expect in case of failure or lack of performance.

SLA is a generic term for an agreement that binds a provider of services to certain commitments and guarantees of performance for the services in question. It normally also details what remedies and rights a user may be entitled to when the terms of the agreement are not met or when consequential damages ensue. In the case of the TNSW, the entity responsible for the operation is Customs and, therefore, it is up to Customs to issue supplemental SLAs to the users both for B2G and G2G services. The SLA may take the form of different legal instruments as appropriate to the relationship between supplier and client. For example, between Customs and private sector users it may be an operating contract; between Customs and GAs it could be an Inter Agency Agreement; between Customs and external entities (e.g. the port) it could be an Interchange Agreement. NT is effectively a sub-contractor to Customs and their licensing agreement should be aligned with the commitments made in the SLAs.

At the moment NT is effectively providing the network facility and a routing service for TNSW messages, without adding value to the transaction but it is encouraging traders to submit data directly to the TNSW in the shape of XML messages. However, as they do not, as yet, have applications that allow data creation like the VASs, only the minority of major traders that have enterprise systems capable of creating an XML message would be able to do so. As a result, there has been little enthusiasm from the trading community to abandon the tried and trusted VAS method.

This situation has put NT on a competitive path with the remaining VASs as the VASs are not able to vary the basic TNSW usage fee to compensate for changing market circumstances. Indeed, there is evidence that the VASs are seeking ways of creating value-added opportunities around the basic TNSW services to boost their income which could result, potentially, in unnecessary additional costs to the trade.



## 12 Fees

Customs is in charge of determining whether fees should be paid for using the TNSW facility and the level at which these fees should be set.

The fee payable by a user for submitting a transaction via the TNSW was THB 25 per transaction until December 2022 when, by Cabinet Resolution, it was reduced by 20% to THB 20. This fee is charged by the VAS for every B2G transaction conducted through them and the VAS is allowed to retain it. The VASs consider this fee inadequate to cover the true cost of the service and, therefore, they claim that they need to rely on value added services to be able to operate in the TNSW environment in a commercially viable manner.

As the TNSW fee is not remitted to Customs, and Customs is not paying NT for providing the service, NT has to rely on the fees charged for network access to operate the facility.

It is unclear whether this fee structure is adequate to support the cost of operation or in line with WTO's GATT stipulation that a fee for a service provided by government to the traders should be limited in amount to the "approximate cost of services rendered"<sup>42</sup>, when considering that, at present, the cost of using the TNSW also includes additional commercial charges levied by the VASs.

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<sup>42</sup> GATT – General Agreement on Tariffs and Trade, 1947, Article VIII, 1. (a)

## 13 Related Initiatives

### 13.1 Publishing Information - National Trade Repository

A Thai National Trade Repository (TNTR) has been developed under the auspices of the Department of Trade Negotiations. This website fulfils the obligations under ATIGA<sup>43</sup> that every member state should publish trade related information on the Internet, and it follows the content structure recommended for the ASEAN Trade Repository<sup>44</sup>.

The information appears to be comprehensive, but users do not find the website user friendly or easy to navigate. They also complain that, in general, it is not easy to find accurate and up-to-date information on the Internet, despite every ministry or departments having their own websites. Of the various websites, the one that appears to be more informative or up-to-date is Customs'.

There is no integration or interconnection between the TNTR and the TNSW, other than a cross-link to the Home Page.

### 13.2 ASEAN Single Window

Member states agreed to work together to implement the ASEAN Single Window (ASW)<sup>45</sup>. Under the agreement, members were obliged to implement a National Single Window as a pre-condition of participating in the ASW<sup>46</sup>.

The objective of the ASW, at least initially, is to be a platform that allows exchange of documents between regulatory authorities in member states. In this light, it is therefore also an opportunity for harmonizing data elements and processes across member states.

Initially, the scope of ASW was limited to the exchange of Form D (the intra-ASEAN Certificate of Origin) and ACDD (ASEAN Customs Declaration Document). Although, trials of these message exchange have been carried out and have been largely successful, practical adoption and use of these facilities is hampered by the limitations in each country's national legislation with regard to mutual recognition of electronic documents and of the authorities issuing them.

As a result, traders complain that, despite many years of trialling, Form D and ACDD cross-country recognition is still not functioning within ASEAN<sup>47</sup>.

This is not so much a technical issue but one concerning alignment of legislation in different countries and mutual recognition agreements.

### 13.3 National Digital Trade Platform

The National Digital Trade Platform (NDPT) is an ambitious project aimed at linking through electronic data exchanges all the entities involved in trade and logistics, both B2B and B2G on a single electronic platform

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<sup>43</sup> ATIGA: ASEAN Trade In Goods Agreement, May 2010, Article 12

<sup>44</sup> ATIGA: ASEAN Trade In Goods Agreement, May 2010, Article 13

<sup>45</sup> Agreement to Establish and Implement the ASEAN Single Window, Bali, 2003

<sup>46</sup> Agreement to Establish and Implement the ASEAN Single Window, Bali, 2003, Article 5

<sup>47</sup> The only country that appears to accept electronic Certificates of Origin is Japan

which would make use of blockchain and would stretch across borders allowing goods to “flow through” to the recipient country across national boundaries.

The project is a private sector initiative started and run by three private sector trade associations, the Thai Bankers Association, the Federation of Thai Industries and the Board of Trade. The international dimension of the project is provided through potential integration with the Tradewaltz network in Japan and the Networked Trade Platform (NTP) of Singapore.

The government is represented on the project board by the Office of the Public Sector Development Commission (OPDC). OPDC’s role is to ensure that national legislation supports the operation of the platform and that opportunities for integration with the TNSW (i.e., the regulatory side of trade) are leveraged.

The platform is said to be in an advanced stage of development and testing, with approximately 93% of processes already digitized.

However, the original intention of providing a seamless passage across international borders seems to be hampered by national legislation in the participating jurisdictions which prevents electronic documents issued elsewhere to be accepted.

## 14 Conclusions and Recommendations

### 14.1 Success Factors

The TNSW program can be said to have many positive aspects.

- Firstly, it would appear that it is based on a solid legislative framework which allows, not only its current mode of operation, but also a foundation for potential future expansion and enhancements.
- The Governance structure in place is appropriate and solid in that it provides a direct line of accountability to the highest level of government via the NLDC with oversight and policy implementation devolved to the TNSW Sub-committee.

The only observation that we would make is that it is unusual for the Chair of the executive governing entity (the TNSW Sub-committee) to be held by the same entity that acts as Operator, i.e., Customs, as the Operator is typically an entity that reports to the entire sub-committee. Circumstances can be envisaged where this arrangement may present a conflict of interest.

The above solid foundations have allowed the following achievements:

- Automation through electronic messages of virtually all B2G and G2G transactions, including payments.
- All trade logistics partners, including ports, have been linked into the network.
- Customs clearance has been fully automated without the need for submission of paper documents or physical interaction.
- All of the above is currently financed (though this may change) by what appears to be a very low fee of THB 20 (25 until recently) per transaction (please note, however, comments at *Section 12 above*).
- Usage of the TNSW as an electronic platform that has replaced all the paper-based regulatory interactions encompasses participation by virtually 100% of traders and, significantly, traders are generally satisfied with the method, performance and costs associated with the TNSW, although they would appreciate further simplification and clarity around the access model (i.e., VAS, NT, SEF (Single Entry Form), etc.).

**The achievements of the TNSW are substantial and compare very positively to other experiences around the World by similar or even more advanced economies.**

### Recommendation

**Whilst Customs' dual role as entity responsible for the TNSW and Chair of the TNSW Sub-committee reporting to the NLDC does not seem to have caused any issues so far, it is advisable that this arrangement should be reviewed also in light of the fact that the role of operator is now being performed by NT and that key decisions regarding contracts and fees are due to be made.**

### 14.2 Drawbacks

Whilst recognizing the substantial achievements of the TNSW and the pragmatism of its approach, there are however, some drawbacks in the current operation of the TNSW.

#### 14.2.1 Functional Architecture

- Firstly, the TNSW cannot be said to be aligned with the "single submission" model predicated by international standards organizations and considered to be the general model of good practice (see *Section 2 above*).

As mentioned earlier, this is not necessarily a problem if, like in the Thai context, the Single Window is seen to be efficient and cost effective. Nonetheless, the ease, speed and cost of operation could still be

substantially reduced if duplication of inputs across different GAs and Customs was replaced with a “single submission” model as is, after all, strongly encouraged by ASEAN (see *Section 2.1 above*).

- The development of the Single Entry Form (SEF) by NT may be seen as a first step towards a “single submission model” but take-up by the users is poor as they claim that it is not fully functional and they prefer to continue to use the service provided by the VASs. Equally, agencies generally prefer to use the front-end provided by their established in-house systems. The decision to build the SEF appears to have been taken without global consultation with stakeholders, both public and private.

#### 14.2.2 Lack of Back-Office Automation

- Not all GAs process application through a back-office system. This means that electronic messages received by e-Customs do not carry the same guarantee of integrity as messages that have undergone a controlled series of steps of approval in an automated system, such as the systems in use by FDA, or the Department Fisheries or the Department of Foreign Trade.
- The above also leads to some transactions requiring a long time in the back-office cycle to process.

#### 14.2.3 Continued Use of Paper

- Some GAs still require paper documents, despite the law allowing electronic transactions. This would appear to be a misunderstanding of the law, in particular, of the interpretation of certain umbrella laws such the Electronic Transactions Act 2001 and the Electronic Performance Act 2022.

#### 14.2.4 Role of Service Providers

- The concept of operation of the TNSW has been complicated by the decision to appoint NT as the sole operator. However, NT’s role is at present only limited to providing a gateway for messages and do not appear capable of providing the value-added services necessary to create data and transform it into message.

This role is still being performed by the remaining VASs and, in fact, traders express a preference for using VASs as they find the arrangement convenient and easier and are therefore reluctant to take up offers by NT to connect directly to the TNSW or using the SEF.

At present NT does not charge for operating the NSW but they charge for network usage. The current arrangement is not transparent in terms of what the real cost is of using the TNSW and the roles of users and providers have become muddled and conflicting.

Furthermore, NT is intending to charge a fee (which, in any case, would have to be approved but the NLDC) for using the TNSW based both on transaction numbers and volume of data. Elsewhere, where fees are levied for use of the Single Window, generally a fee based on volume of data has been rejected as it is seen to unfairly penalize users whose transactions, by their nature, carry large volumes of data, e.g. complex descriptions of goods or large number of cargo items.

### Recommendation

**The GOT should make a clear decision as to whether the TNSW should be publicly or privately operated and funded and identify the fairest model to implement either decision. Both approaches are legitimate as, indeed, would some form of Public Private Partnership (PPP), but what should be remembered is that, under WTO rules, any charges levied to the trade for services provided can only cover the cost of operation. Therefore, they should not be used to raise government revenue. This does not mean that a Single Window or elements of a Single Window cannot be operated by the private sector as long as the arrangement is legal, fair and transparent.**

**As a baseline, the GOT should endeavour to ascertain the real cost of the operation so that different potential models can be considered in terms of relative benefits and drawbacks. The GOT could benefit from adopting methodologies used in other countries as a model for evaluating all the pros and cons of**

different financial models. The WBG would be happy to assist the GOT by facilitating this process with appropriate methodologies.

### 14.3 Transparency of Information

Efforts to publish trade related information by various Thai authorities on their websites and in the TNTR are recognized and these could be said to assure the alignment of Thailand with Article 1 of the TFA<sup>48</sup>.

However, the reality as reported by traders is that they do not find the TNTR to be a viable single source of information as it is not easy to navigate, and it cannot be relied on to be accurate and up-to-date. The same, it is claimed, can be said of most other GA websites with the exception of the Customs website which appears to be the most informative. However, often, discrepancy of information is found on different websites which leads to uncertainty or confusion.

### Recommendation

The GOT should consider implementing a *Trade Information Portal (TIP)* as the single authoritative source of trade related information that aggregates and integrates all trade related information from all GAs. This could be done by re-purposing and improving the user-friendliness of the TNTR to make it more user-oriented rather than aimed at simply fulfilling the ATIGA prescription.

There are also benefits to be derived from considering ways to interface or integrate a TIP with the TNSW.

Successful models of TIPs have been implemented in other ASEAN countries, such as Laos, Cambodia, Vietnam, Myanmar and Indonesia.

However, ensuring that a TIP or trade repository is constantly accurate and up-date, thus building up the public's confidence, is not simply a matter of creating a website. It requires coordination and collaboration between the agencies, institutions to underpin it and make it sustainable and a strong lead agency to champion it and rally support.

Useful recommendations on implementing a TIP can found in Recommendation No. 38 by UN/CEFACT<sup>49</sup>.

### 14.4 Business Process Model and Technology

#### 14.4.1 Single Submission Model

The desirability of implementing a true "single submission" model of Single Window was expressed by many parties during the Mission's interviews, recognizing the inefficiencies inherent in the current model.

A "single submission" model would require three fundamental conditions:

- A completely harmonized data set across all GAs
- A common data entry front end
- A centralized approach to certain core elements of data

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<sup>48</sup> TFA: Agreement of Trade Facilitation, WTO, 2014, Article 1: Publication and Availability of Information

<sup>49</sup> UN/CEFACT: Recommendation No. 38, Trade Information Portals, ECE/TRADE/465, 2021 - [https://unece.org/trade/publications/recommendation-ndeg-38-trade-information-portals-ecetrade465#:~:text=38%3A%20Trade%20Information%20Portals%20\(ECE%2FTRADE%2F465\),-Trade&text=Transparency%20and%20predictability%20are%20essential,the%20actual%20sale%20of%20merchandise](https://unece.org/trade/publications/recommendation-ndeg-38-trade-information-portals-ecetrade465#:~:text=38%3A%20Trade%20Information%20Portals%20(ECE%2FTRADE%2F465),-Trade&text=Transparency%20and%20predictability%20are%20essential,the%20actual%20sale%20of%20merchandise)

Already, the mission understands that the current data messages are constructed using the WCO Data Model 3 (DM3) as the common data set. It is, however, also understood that this was an early version of the DM3 which does not necessarily cater for all the data elements that GAs (other than Customs) require.

An effort should therefore be made to review the data model and build an up-date and complete version of the TNSW Data Dictionary.

The common data entry front end could be an extension of the SEF in order to make it cater comprehensively for all forms of CLPA application requests and interactions. In order to approach this pragmatically, it would probably be advisable to bring all concerned GAs around the table and discuss potential compromises to unify and simplify as much as possible the different processes.

Creation of a single-entry front end does not negate the continued use of the GAs' current back-office systems. They can be adapted to receive a message from the Single Window front-end instead of direct input on their system. Their existing front-end can remain as a fallback mechanism.

The TNSW front-end may be a facility that is provided by the Single Window operator or could be provided by the VASs or other private sector entities. This must be decided taking into consideration decisions regarding the operational issues, as discussed in *Section 5*.

Indeed, in light of developments like NDTP, is it possible to envisage a future model where information builds up as a combination of multiple streams of messages deriving from a variety of activities, rather than as a single entry. In this scenario there would be a need for systems to interact more on the basis of exchanging data messages rather than relying on online data creation. Therefore, the "single submission" model of TNSW could be one where external systems can communicate with the TNSW via API (Application Programming Interface) alongside web input forms.

The "single submission" model would require an "intelligent" Single Window, i.e., not simply a routing mechanism as at present, but an independent, centralized repository where all or most of the data relating to traders and transactions is aggregated and made available to parties as required based on business rules. This will require an agreement and a stronger legislative basis for agencies sharing information for operational purposes than at present. This model is illustrated in our ***Error! Reference source not found.*** report attached.

#### 14.4.2 Risk Management

The potential model of TNSW described above would have the benefit of allowing the introduction of modern automated risk management techniques, as illustrated in our ***Error! Reference source not found.*** section.

#### 14.4.3 Workflow Management System for Non-automated GAs

A further benefit of this model, is that it would facilitate the build of a common simple web front-end for those GAs that are still not automated in the back-office as they would not need to introduce servers or substantially change their mode of operation. Indeed, it may be possible to implement this using an open source, off-the-shelf WMS (Workflow Management System).

The central TNSW repository would effectively function as cloud storage for these GAs. This would guarantee that all the data transacted via the TNSW satisfies the necessary minimum standards of integrity.

### Recommendation

**The Mission recommends that a technical working group or committee is formed to discuss potential business process and consequential technical architecture upgrades of the TNSW, such group comprising representatives from all the stakeholders. The output of the discussions should be a strategy document which will inform subsequent business process re-engineering and technical development.**

**The technical working group would benefit from studying comparable implementations of Single Window in economies similar to Thailand for the purpose of evaluating the approach to a single submission model taken elsewhere and the best way to achieve it, given the challenges faced in other countries.**

#### **14.4.4 Participation in National Digital Trade Platform**

The NDTP is an evolving project led by private sectors stakeholders in the supply chain aimed at facilitating the fulfilment of commercial transactions involving the movement of goods (imports and exports) in-country and across borders. The Government has a role to play as, at various junctions, interactions with Government entities (B2G) are required to allow goods to move to the next step. Although this project is driven by the private sector for commercial interest, Government has a vested interest in playing its part where facilitation is required.

### **Recommendation**

**The Mission considers continued participation in the NDTP project very valuable as it gives the GOT the opportunity to keep abreast of significant developments in the digitization of the supply chain and to influence or facilitate them in an appropriate manner.**

#### **14.5 Organization and Operation**

As discussed in *Sections 3 and 12 above*, the structure upon which the TNSW operates at the moment and the issue of fees are closely connected.

As stated elsewhere in this report, the current operation is based on lawful foundations. However, the lack of SLAs between Customs, as entity responsible, and the end users (traders and GAs) is a gap that needs to be remedied. For this, it is necessary to tie down the license agreement between Customs and NT ensuring that the agreement is aligned with the SLAs.

As we were not allowed to see the licensing agreement, we are unable to make specific recommendations in this respect.

The current fee mechanism also appears to be unsustainable but the alternatives being mooted could also be problematic.

### **Recommendation**

**The Mission recommends that, before any contractual arrangements are finalized, an open dialogue takes place among the stakeholders to discuss pros and cons of various operational and financial arrangements, as the ultimate decision must be one which is seen by all parties concerned as being fair and sustainable, as well as aligned with international and national law.**

#### **14.6 Legislation**

The current operation of the TNSW appears to be founded on a solid legal basis, in respect of its operation and constitution.

The Mission Team's findings, however, have identified certain issues which would benefit from a more targeted approach. Indeed, a number of factors leads the Mission to recommend that the GOT should consider enacting a specific "*TNSW Law*" to put the whole operation on a solid footing and allow it to go forward.



Most NSW legislation internationally is based on the key principles laid out in UN/CEFACT's Recommendation No. 35<sup>50</sup>. However, these need to blend appropriately into existing national legislation.

The WBG has assisted a number of countries with drafting National Single Window legislation taking into account all local circumstances and would be pleased to share examples or assist the GOT with developing appropriate legislation.

## 14.7 Summary of Recommendations

Issue	Recommendation	Timeline
<b>Model of TNSW is not aligned with international recommended standard of single submission/single entry point.</b>	The Mission recommends that a technical working group or committee is formed to discuss potential business process and consequential technical architecture upgrades of the TNSW, such group comprising representatives from all the stakeholders.	6 months to discuss strategy. 6 months to build specifications. Build and implementation: 1-2 years
<b>Lack of Risk Management in some agencies and Coordinated Border Management</b>	A potential approach to Risk Management is discussed in more detail in the <i>Risk Management and Border Agency Collaboration</i> section.	1-2 Years once data platform is put in place
<b>Dual role of Customs as operationally and legally responsible for TNSW and as Chair of the TNSW-Subcommittee</b>	Review potential conflicts of interested.	6 months to discuss and reach agreements
<b>Lack of clarity and transparency about role of NT and VASs, fee model, contractual commitments (SLAs), etc.</b>	Open discussion among stakeholders to review the operating/financial model and reach clarity about separate private sector and public sector roles in the operation of TNSW.	6 months to discuss Legislation probably required or Cabinet decision 6-12 months to implement
	The Mission recommends that, before any contractual arrangements are finalized between Customs and NT, an	

<sup>50</sup> [https://unece.org/fileadmin/DAM/trade/Publications/ECE-TRADE-401E\\_Rec35.pdf](https://unece.org/fileadmin/DAM/trade/Publications/ECE-TRADE-401E_Rec35.pdf)

Issue	Recommendation	Timeline
	open dialogue takes place among the stakeholders to discuss pros and cons of various operational and financial arrangements, as the ultimate decision must be one which is seen by all parties concerned as being fair and sustainable, as well as aligned with international and national law.	
	Due to the lack of legislative provisions regarding the determination of fees associated with the operation of the TNSW system, and the inability to confirm the accuracy and reliability of the information provided by the government officers, it is recommended that further clarification be sought regarding such fees.	
<p><b>Lack of single authoritative source of trade information.</b></p> <p><b>Inconsistency of information on various agencies' websites.</b></p>	The GOT should consider implementing a Trade Information Portal (TIP) as the single authoritative source of trade related information that aggregates and integrates all trade related information from all GAs. This could be done by re-purposing and improving the user-friendliness of the TNTR.	<p>6 months to define strategy and set project up.</p> <p>6-12 months to implement</p>
<p><b>Keep close to developments in private sector driven initiatives to digitize supply chain.</b></p>	The Mission considers continued participation in the NDTP project very valuable as it gives the GOT the opportunity to keep abreast of significant developments in the digitization of the supply chain and to influence or facilitate them in an appropriate manner.	On-going
<p><b>Allowing exchange of electronic documents across borders</b></p>	It would be good practice to include a provision in legislation to ensure that the current and future adherence to international standards is an obligation in law. An electronic	May require legislation changes.

Issue	Recommendation	Timeline
	<p>record received from another jurisdiction should have the same validity in the national jurisdiction as an electronic record generated domestically. If this provision is not already catered for in existing e-transactions legislation, then it could be included in a potentially new NSW Act.</p>	
<p><b>Whilst the TNSW is operating in conformance with the law, its establishment is not regulated by a specific law which clearly states the duties, rights and responsibilities of the various stakeholders.</b></p>	<p>As a result all key decisions need to be approved ad hoc by the NLDC (via the TNSW Subcommittee) and/or ratified by Cabinet. This would be simplified, as well as being more transparent, by having an umbrella “TNSW Law” embracing all aspects of its governance and operation.</p>	<p>Drafting Law – 3-6 months Cycle to pass law.</p>

## Appendix A: Summary of the interviews and workshops

### List of Interviews

During the project lifetime, the experts on Trade Facilitation components has visited Thailand twice to conducted interviews with key stakeholders around Thailand’s NSW system and the National Trade Facilitation Committee (NTFC). In each visit, the team had a chance to interviews with these following stakeholders, both in person and online depending on the stakeholders’ availability and preferences.

Stakeholders	Type of Organization
<b>First visit: September 19 – September 23, 2022</b>	
Electronics Transaction Development Agency (ETDA)	Government
Customs Department	Government
The Federation of Thai Industries (FTI)	Private Sector – Association
Department of Trade Negotiations (DTN)	Government
Department of Foreign Trade (DFT)	Government
The Joint Foreign Chambers of Commerce in Thailand (JFCCT)	Association
Office of the Public Sector Development Committee (OPDC)	Government
Digital Government Development Agency (DGA)	Government
The Thai Chamber of Commerce and Board of Trade of Thailand (TCC)	Private Sector – Association
<b>Second visit: November 28 – December 6, 2022</b>	
Customs Department	Government
Department of Fisheries (DOF)	Government
Rubber Authority of Thailand (RAOT)	Government
Department of Mineral Resources (DMR)	Government
National Telecom Public Company Limited (NT)	Government – Public Company
Department of Foreign Trade (DFT)	Government
Food and Drug Administration (FDA)	Government
The Thai Chamber of Commerce and Board of Trade of Thailand (TCC)	Private Sector – Association
Tradesiam International Co., Ltd.	Private Sector – VAS provider
Netbay Public Co., Ltd.	Private Sector – VAS provider
CTI Logistics Co., Ltd.	Private Sector – Custom Broker

### List of workshops

1. Workshop on Visioning improvement in Thailand’s National Single Window: October 10<sup>th</sup>, 2022 (09.00 – 11.00 hours)
2. Workshop: Global Experience on Administration and Governance Models for the NTFC: December 6<sup>th</sup>, 2022 (13.30 – 15.30 hours)

## WORKSHOPS

### (1) NSW Visioning Workshop

#### Workshop: Visioning improvement in Thailand's National Single Window

Monday, 10th October 2022. 9.00-11.00 hours (2 hours) via Zoom Application

**Zoom link:** <https://worldbankgroup.zoom.us/j/94651705228?pwd=YnBBWm9HZVk0eHZ6Y2JicFA1VmRSUT09>

**Meeting ID:** 946 5170 5228 **Passcode:** Qvn5wf1t?%

*Simultaneous translation will be provided.*

#### BACKGROUND

The National Single Window system (NSW) is a system that can contribute greatly to the country's trade facilitation objective. Having full and effective NSW system can fasten the process of information sharing between government agencies and the traders, which will in turn increasing competitiveness of firms in the country. For Thailand, the National Single Window system is already developed, yet there are still gaps that can be improve and streamline to make the business processes more efficient, keeping the risk level under manage, and improve border agency collaboration.

#### OBJECTIVES

1. To introduce the concept of National Single Window (NSW) system and demonstrate how to harmonizing information (available to the public), data and laws and better coordination of border processes contributes to developing NSW
2. To present findings from the interview mission conducted during Sep. 19 - 23 and identify opportunities for improvement of the Thailand's NSW

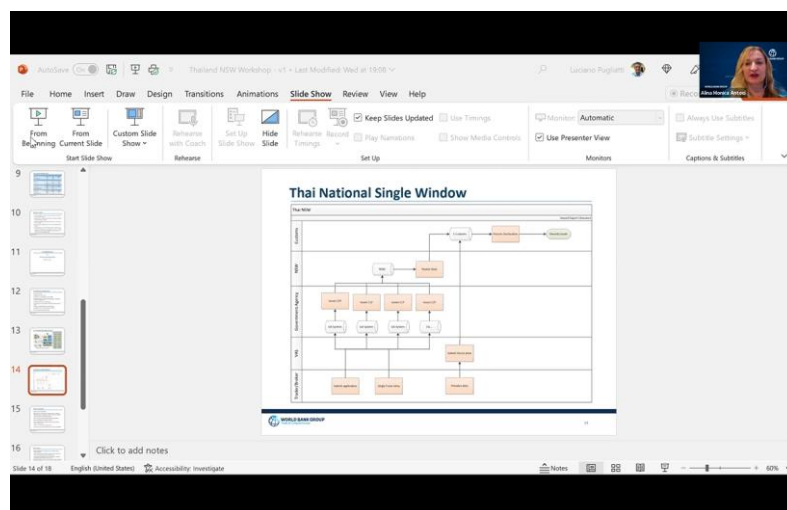
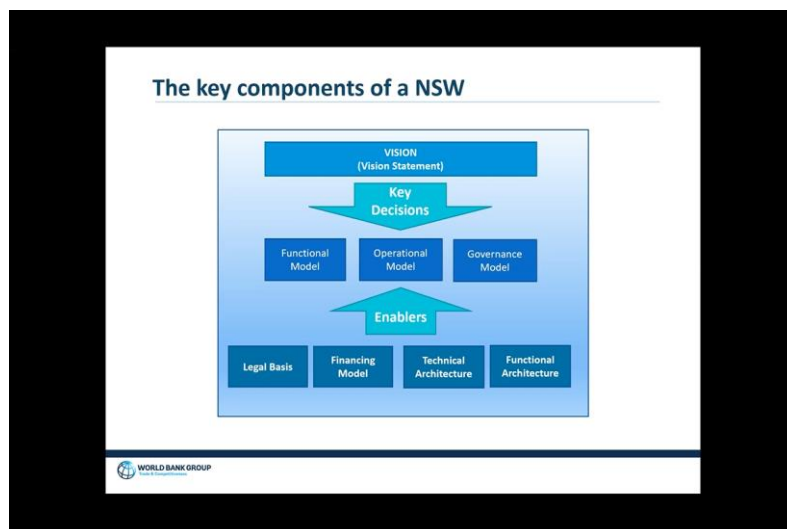
#### AGENDA

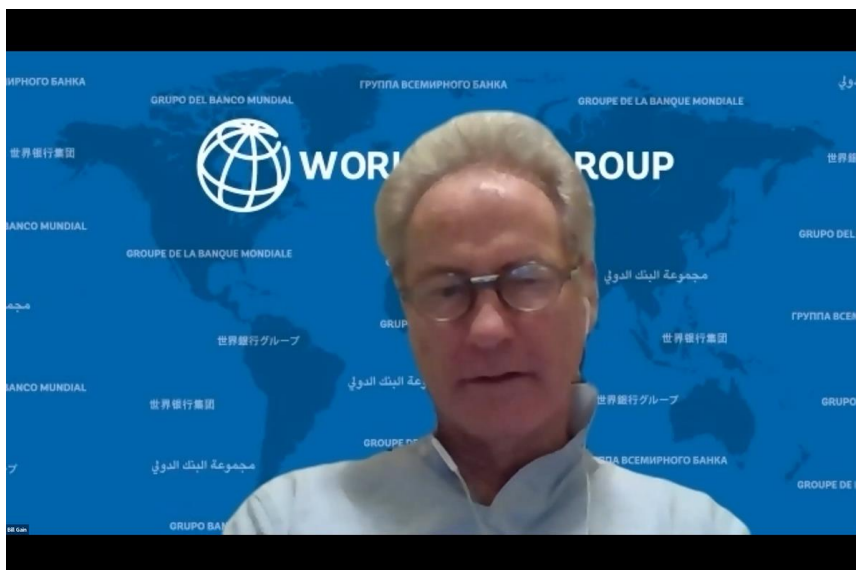
Time	Activities	
9.00 – 9.10	Introduction	World Bank Group
9.10 – 9.15	Roundtable self-introduction	World Bank Group
9.15 – 9.35	Presentation: The Vision of National Single Window	Luciano Pugliatti World Bank Group
9.35 – 10.00	Q&A on lesson learned from other countries	All
10.00 – 10.20	Presentation: The Thai National Single Window – The Way Forward	Luciano Pugliatti World Bank Group
10.20 – 10.40	Q&A on findings about Thailand's National Single Window	All
10.40 – 11.00	Summary and the next steps	World Bank Group

## LIST OF PARTICIPANTS

1. Department of Trade Negotiations (DTN)
2. Department of Foreign Trade (DFT)
3. Electronic Transactions Development Agency (ETDA)
4. Food and Drug Administration (FDA)
5. Fiscal Policy Office (FPO)
6. Ministry of Finance
7. Ministry of Agriculture and Cooperatives
8. Office of the Council of State (OCS)
9. The Joint Foreign Chambers of Commerce in Thailand (JFCCT)
10. Thai Chamber of Commerce (TCC)
11. Thai International Freight Forwarders Association (TIFFA)
12. Thai Airfreight Forwarders Association (TAFA)
13. Institute for Information Technology Innovation, Faculty of Engineering, Kasetsart University
14. V-Serve Logistics
15. Office of the Public Sector Development Commission (OPDC)

## PHOTOS





- (2) Workshop to share global experience on administration and governance models for the NTFC and presentation

## Workshop: Global Experience on Administration and Governance Models for the NTFC

Tuesday, 6th December 2022 at 13.30 – 15.30 hours (2 hours) via Zoom

**Zoom link:** <https://worldbankgroup.zoom.us/j/94817855751?pwd=ME9nanhoeXZrUINLb3Rwd3hiTEROQT09>

**Meeting ID:** 948 1785 5751 **Passcode:** Xk.OJ&wJsR

Simultaneous translation will be provided.

### BACKGROUND

National Trade Facilitation Committee (NTFC) is a working body that are required by the WTO's Trade Facilitation Agreement (TFA) to facilitate international trade activities. Thailand ratified to the WTO's TFA on October 5, 2015, and the National Trade Facilitation Committee (NTFC) in Thailand was established in June 2017. Currently, there is a need for it have a more focused, systematic, and structured approach to TFA reforms so that NTFC can effectively lead inter-agency collaboration and coordinate across government and private sector on trade facilitation issues.

### OBJECTIVES

1. To introduce the role and responsibility of NTFC under the WTO's TFA
2. To present global experience on administration and governance models for the NTFC
3. To discuss about the performance of Thailand's NTFC and opportunities for improvement

### AGENDA

Time	Activities	
13.30 – 13.40	Introduction	World Bank Group
13.40 – 14.10	Presentation: The Global Experience on the NTFC Administration and Governance Models	Alina Antoci World Bank Group
14.10 – 14.30	Q&A on lesson learned from other countries	All
14.30 – 14.50	Presentation: Opportunities for improving the performance of Thailand's NTFC	Alina Antoci World Bank Group
14.50 – 15.20	Discussion session on the topic of Thailand's National Trade Facilitation Committee	All
15.20 – 15.30	Summary and the next steps	World Bank Group

### LIST OF ATTENDEES

1. Representatives from Thailand's NTFC
2. Representatives from NTFC working group



## PHOTOS



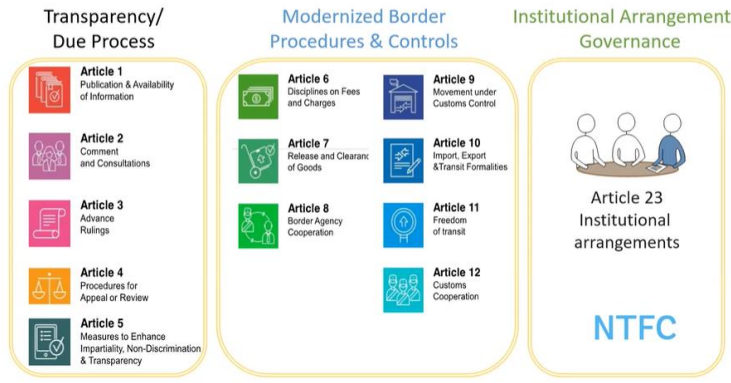
### OUTLINE

1. NTFC in the WTO's TFA context
2. Global experience on NTFC
3. Thailand's NTFC
4. Opportunities for improvement





TFA Project Focus/Objectives



5



NTFC facilitates:

**Domestic coordination**

- **Bring border agencies together** so border management policy and practice are genuinely linked
- **Ensure that the relevant agencies discuss proposals with each other** so duplicate or unnecessary procedures are avoided, and the border process is streamlined, e.g. through data and inspection sharing.
- **Involve traders who are affected by border controls** and can see – in ways that border agencies may not be able to see – how processes could be enhanced to reduce compliance costs while improving levels of compliance.

**Implement TFA's provisions**

- **Full implementation of the TFA would bring significant benefits** to implementing governments, traders, consumers and the multilateral trading system.
- **NTFCs play a key role in aiding the implementation of the TFA**, as in many measures require inter-agency and public-private coordination for effective implementation in a way that promotes trade and development.
- **NTFC's role in facilitating implementation** is therefore particularly important to prevent possible future disputes or other negative consequences associated with non-implementation.

Source: adapted from ITC, 2015. National Trade Facilitation Committees: Moving Towards Implementation



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**Trade Facilitation Agreement Database**

**Thailand**

TFA ratified 5 October 2015

Contact points

Trade info

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## Appendix B: Agencies and Organizations Connected with Thai National Single Window

### Key:

- A. By Automatic Electronic System
- B. By Officers in Electronic system Format
- C. By Officers in Hard-copy Format (3)

No.	Institutions	Initials	A	B	C	Remarks
<b>Linking License/certificate information with government agencies</b>						
1	Customs Department	TCD	32	51	31	
<b>Linking License/certificate data with coordinates and statistical code for import, export, transit activities with the Customs Department</b>			<b>32</b>	<b>51</b>	<b>31</b>	
2	Department of Foreign Trade	DFT	3	37	4	
3	Department of Internal Trade	DIT	1	0	0	
4	Department of Provincial Administration	DOPA	9	0	1	
5	Defense Industry Department	DID	4	6	0	
6	Department of Mineral Resources	DMR	0	4	4	
7	Department of Energy Business	DOEB	0	8	0	
8	Department of Fisheries	DOF	0	15	0	
9	Department of Livestock Development	DLD	0	10	0	
10	Royal Forest Department	RFD	0	1	5	
11	Department of Industrial Works	DIW	3	0	0	
12	Department of Agriculture	DOA	3	16	0	
13	Department of Medical Sciences	DMSC	0	6	0	
14	Fine Arts Department	FAD	0	2	0	
15	Excise Department	EXCISE	0	5	0	
16	Department of Primary Industries and Mines	DPIM	5	0	0	
17	Department of National parks Wildlife and Plant Conservation	DNP	0	16	0	
18	Rubber Authority of Thailand	RAOT	2	0	0	

No.	Institutions	Initials	A	B	C	Remarks
<b>Linking License/certificate information with government agencies</b>						
19	The National Broadcasting and Telecommunication Commission	NBTC	0	0	0	
20	Office of Cane and Sugar Board	OCSB	0	7	0	
21	Food and Drug Administration	FDA	1	1	0	
22	Office of Atoms for Peace	OAP	10	0	0	
23	Thai Industrial Standards Institute	TISI	2	1	0	
24	National Bureau of Agricultural Commodity and Food Standards	ACFS	1	2	0	
25	The Thai Chamber of Commerce and Board of Trade of Thailand	TCCBO T	0	2	0	
<b>Linking Logistics Data</b>			<b>44</b>	<b>139</b>	<b>14</b>	
26	Department of Land Transport	DLT	0	0	1	
27	Marine Department	MD	1	11	0	
28	Port Authority of Thailand	BKK	1	5	0	
29	Airports of Thailand (Cancelled)	AOT	0	0	0	Linkage with NSW has been cancelled. Changed to use the system that follows The International Civil Aviation Organization (ICAO)'s standard
30	Aeronautical Radio of Thailand LTD. (Cancelled)	AROT	0	0	0	
31	The Civil Aviation Authority of Thailand (Cancelled)	CAAT	0	0	0	
<b>Linking Information about Privileges and Incentives</b>			<b>2</b>	<b>16</b>	<b>1</b>	
32	Department of Disease Control	DDC	0	2	0	
33	Department of Mineral Fuels	DMF	0	2	1	
34	Industrial Estate Authority of Thailand	IEAT	0	5	3	
35	Electrical and Electronics Institute	EEI	1	1	0	
36	The Board of Investment of Thailand	BOI	6	1	4	
<b>Linking other types of information</b>			<b>7</b>	<b>11</b>	<b>8</b>	
37	Social Security Office	SSO	0	0	0	Not Relevant to Export and Import
<b>Total</b>			<b>85</b>	<b>434</b>	<b>108</b>	

## Appendix C: Comparative Fees and Charging Models

Country	System	Fee	Participation	Comments
<b>Barbados</b>	Electronic Single Window	None	Customs All agencies issuing License, Permit, Certificate or Other documents (LPCO) to import or export products Port Authority	
<b>Canada</b>	Single Window Initiative	None	Nine participating government departments and agencies representing 38 government programs	
<b>Finland</b>	PortNet	None	-Customs -Port Authorities -Ships Agents -Traffic & logistics clients - Maritime authorities - Coastguard -21 largest ports	Includes all maritime requirements, Customs processes and terminal notifications regarding containers. Mandatory participation
<b>Hong Kong</b>	Digital Trade and Transportation Network (DTTN)	DTTN pricing can be grouped into three categories. These include: 1.Registration and Annual Fee 2.Document Conversion and Exchange Service Fee (or DTTN Document Fee); and 3.Solution Development Fee -Registration: HK\$5,000 -Annual Subscription Fee:HK\$1,000 -Document fees: HK\$6/doc and HK\$3 for confirmation and amendment document	Trade, financial and transportation community. Government agencies	Interconnection between government, trade, logistics and financial industries.
<b>India</b>	Indian Single Window Interface for	No Fee	-Customs 44 Departments/agencies	In the present phase of

Country	System	Fee	Participation	Comments
	Facilitating Trade (SWIFT)		are associated with clearances of import and export goods. Out of these, 9 agencies issue clearances or NOC for live consignments i.e., post import.	operations, no fee will be charged.  The fee structure, details and method of collection of the transaction fees will be intimated in due course.
<b>Indonesia</b>	Indonesian National Single Window (INSW)	No fees charged at this time. Options remain available as a future development	-Customs and Excise Department -Trade Ministry -Food and Drug Control Agency Agricultural Quarantine Authority -Post and Telecommunications Department	The system-build and operation are financed by the government. The implementation was outsourced to a private supplier.  Most OGAs appear to have very slow changes in simplifying and streamlining procedures, streamlining processes and standardization of data elements and format before integrating into INSW
<b>Malaysia</b>	My TRADELINK	Fixed price per permit for electronic permits EDI—RM0.8/kb or RM5/doc. + -One-time registration @ RM500 (RM200 for SMEs) + -Mailbox charges @ RM90 to RM160 All operating and maintenance costs of the NSW are borne by DNT. DNT recovers its investment through charging the users based on the following business model:	17 permit issuing agencies	Connects trading communities with relevant government agencies Single platform on which the trade community can exchange documents required for export, import and transit

Country	System	Fee	Participation	Comments
		<p>1. Usage (based on the message size (kilobyte) transmitted: Electronic Customs Declarations, Electronic Customs Duty Payment, Electronic Manifests)</p> <p>2. Document-based (Electronic Permits, Electronic Preferential Certificates of Origin)</p> <p>The revenues collected should cover the costs of recovery, the operational costs and technology refresh.</p>		
<b>Philippines</b>	PNSW	At present, none.	Aims to connect 66 agencies and 10 economic zones in approving import and export permits and other trading requirements.	
<b>Rwanda</b>	Rwanda Single Window project	At present, funding and user fees are not yet defined.	<ul style="list-style-type: none"> <li>-Rwanda Revenue Authority (Customs)</li> <li>-Ministry of Trade and Industry (MINICOM)</li> <li>Ministry of Agriculture and Animal Resources</li> </ul>	Self-assessment is being introduced in addition to implementing pre-clearance of taxes and duties
<b>Senegal</b>	Orbus	<ul style="list-style-type: none"> <li>-One time \$200 USD subscription fee</li> <li>-\$10 per transaction</li> <li>-\$2 additional document fee</li> </ul>	<ul style="list-style-type: none"> <li>-Customs</li> <li>-Banks</li> <li>-Insurance Companies</li> <li>-Currency and Credit Department (exchange permits)</li> <li>-Plant Protection</li> <li>-Livestock</li> </ul>	Full optimization of the Senegal SW has been impeded by the slow pace of automation
<b>Singapore</b>	TradeNet	<p>One-time registration fee</p> <p>Monthly fee to maintain account.</p> <p>Cost coverage and profit are ensured through charges imposed on users of TradeNet.</p>	35 government agencies involved in border clearance, trade and transportation community	Provides the trading community with an electronic means of submitting trade documentation to all relevant government authorities, including business

Country	System	Fee	Participation	Comments
		S\$20/month per account user and S\$2.88 per transaction or permit.		data, customs clearance, export, transit, permits Import/export documents can be submitted at a single point
<b>Sweden</b>	Sweden Single Window	None <i>(financed by the Government under regular budgetary allocations)</i>	Full range of relevant government agencies—traders, brokers and agents	Accessible through Swedish Customs' website -Import, export and transit -Electronic funds transfer -Trade Registration -Agricultural permits -Hunting and gun registration
<b>USA</b>	International Trade Data System (ITDS)	No user fees are collected to finance ITDS/ACE. It is financed through appropriations. Government absorbs the costs of implementation and operation. Cost benefit analysis reveals that there will be savings and benefits to Government and Traders through use of ITDS and the modernized, streamlined and simplified procedures.	47 ITDS Participating Government Agencies (PGAs) currently slated for ACE integration	Provides a facility for integrated government oversight of overseas trade through utilization of a single window. Provides a facility through which government agencies can electronically submit all information