

Law for SMEs Promotion and Protection in Vietnam and Thailand

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ABSTRACT

Under movement toward ASEAN market integration, the Small and Medium Enterprises (SMEs) not only create new business opportunities but also face issues of new market competitors. Laws governing SMEs have been and will continue to be important mechanisms to promote and protect SMEs in the ASEAN market. The comparative study of the law on SMEs promotion and protection may lead to a better understanding and possible developments on legal mechanisms for SMEs promotion and protection in ASEAN countries. This paper compares laws and regulations which support SMEs development in Vietnam and Thailand, studies legal frameworks which maintain fair level playing fields in Vietnam and Thailand, and examines the differences and similarities of the laws for the SMEs promotion and protection between Vietnam and Thailand. The paper concludes with development proposals of the laws for SMEs promotion and protection in Vietnam and Thailand.

Keywords: SMEs promotion law, Competition law, Vietnam, and Thailand

1. INTRODUCTION

SMEs are the backbone of market economy in Vietnam and Thailand. The development of SMEs in various business sectors will help create fundamental improvements on the economy and society. In Thailand, SMEs has great support from SMEs law and policy which help increase numbers of SMEs entrepreneurs which then translates to a rise of market economy in Thailand. In Vietnam, SMEs are also considered as a main factor driving economic growth and development. SMEs help create wide business chains that facilitate market and economic rise in both Vietnam and Thailand. While the SMEs in both Vietnam and Thailand are important to the market economy, there must be a study on laws and policies which shape development of SMEs in both countries. The laws and policies would have include mechanisms which support the SMEs growth and provide fair market competition for SMEs.

This paper explores the differences between laws and policies for SMEs promotion and protection in Vietnam and Thailand with regard to coming ASEAN market integration. The paper will be divided into four main parts:

1. The laws promoting SMEs development in Vietnam and Thailand, which will focus on a comparison of laws relating to SMEs promotion in Vietnam and Thailand.
2. The law for fair competition which helps to protect SMEs from unfair business behaviours.
3. The comparison of laws relating to unfair market competition in Vietnam and Thailand.

4. The conclusion and recommendation to the development of laws and policies for SMEs promotion in Vietnam and Thailand.

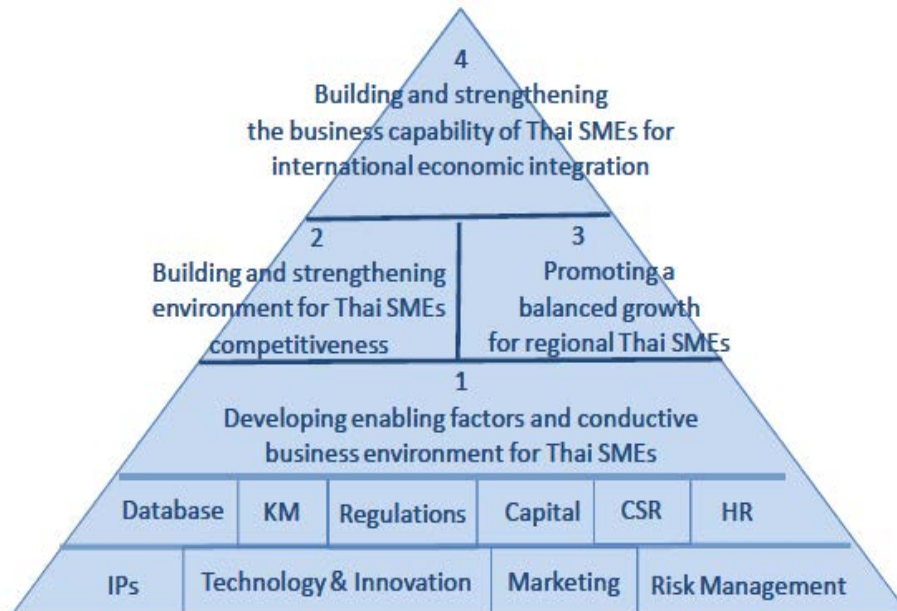
2. LAWS ON SMES PROMOTION IN VIETNAM AND THAILAND

2.1 Laws on SMEs promotion in Thailand

In Thailand, SMEs businesses are expanding rapidly because there are laws and government policies supporting Thai SMEs development and the Thai government considers that the development of SMEs is a vital factor for economic development (The Thai Office of SMEs Promotion, 2000). The government has established financial assistance to support SMEs based in the SMEs Bank Thailand and the government making target loans given through the Specialized Financial Institutions (SFIs) to SMEs in Thailand (Poonpatpibul and Limthammahisorn, 2005). The government also provides the “Small-Industry Credit Guarantee Corporation” as a guarantor to a bank when SMEs are facing difficulty securing loans from banks (The Thai Office of SMEs Promotion, 2000).

The Thai SMEs are able to request financial loans from The SMEs Bank Thailand which is purported to be a supportive financial institution for SMEs (SMEs Bank Thailand, 2016). The SMEs are allowed to seek financial assistance of bank guarantees, and other financial services from the SMEs bank (SMEs Bank Thailand, 2016). In addition, various government policies become mechanisms to increase the growth of SMEs business. The diagram below presents the government strategic policies for SMEs promotion in Thailand.

Diagram 1: Thailand 3rd Master Plan on SMEs promotion



Source: OSMEP, 2012, APEC Ease of Doing Business 2012 Stocktake Workshop Moscow, Russia 12-13 February 2012

By the strengthening of strategic government policies for SMEs, the SMEs in Thailand appear to have vital support with and expectation to increase in numbers.

In addition to the government policy, Thailand has adopted specific legislation that promotes SMEs businesses. The legislation is the *SMEs Promotion Act, B.E. 2543(2000)* (hereinafter known as the “Promotion Act”) which was passed on February 6, 2000. The Promotion Act establishes the SMEs Promotion Commission and the Office of SMEs Promotion Commission. The Commission and Office would then be a cohort agency to establish and administer regulations and policies to support SMEs in Thailand. The Promotion Act requires the Commission and the Office to:

- *“Formulating SMEs Promotion Master Plan and SMEs Promotion Action Plan and producing policy recommendations for the improvement of laws and regulations in concern with the SMEs.*
- *Propelling, supporting and developing the SME promotion systems and integrating the SME promotion works of all public and private agencies, domestically and internationally, to ensure their accomplishment in line with the SMEs Promotion Master Plan and the SMEs Promotion Action Plan*
- *Developing SME knowledge and database to support SME policy recommendations and SME promotion work*
- *Administering the SMEs Promotion Fund so as to be a tool for an effective SME promotion.”* (The Thai Office of SMEs Promotion, 2016)

In addition, the Promotion Act established important matters, such as, responsibility for SME measures and clarification of tasks to support SMEs (Promotion Act, section 5, section 10)¹, establishment of SMEs fund and national SMEs promotion plan (Promotion Act, section 30-36).²

Thus, what can be seen from the government policies and SMEs legislation in Thailand is that there are policies and legal mechanisms to support the development of the SMEs. When any Thai SMEs requires business support regarding know-how, financial and/or business opportunities, they can refer to the Office of SMEs Promotion Commissions for assistance.

2.2 Laws on SMEs promotion in Vietnam

It is estimated that the SMEs in Vietnam account for 95 per cent of Vietnam’s businesses (Binh, 2013). The large numbers of the SMEs in Vietnam economy is due to Vietnam’s government policies on economic reform (McKinsey, 2012) and a policy to promote SMEs businesses. Based on research of Hoang (2016), the Vietnam government has policies to support SMEs in acquiring loans at commercial banks and the State Bank of Vietnam. The policy alleviates financial difficulty of SMEs and provides initial financing to SMEs in Vietnam. In addition, the Vietnam government establishes information and business consultation to SMEs through the Ministry of Planning and Investment, which has established an online website to assist all SMEs in sharing information, promoting products, services, and cooperate among SMEs (Hoang, 2016).

Moreover, the government also adopted regulations which develop SMEs by the Decree No.56/2009/NĐ-CP. The Decree prescribes the policies and management support state assistance in the development of SMEs in all business sectors. The Decree requires that the government agencies must prepare planning assistance for development of SMEs and must

¹ Thai SMEs Promotion Act section 5, section 10

² Thai SMEs Promotion Act section 30-36

create and administer support programs to build SMEs on the basis of economic and social development (Vietnam Decree No.56/2009/NĐ-CP article 4-5). Based upon Decree No.56/2009/NĐ-CP, the Vietnam government also created further regulatory support to SMEs by issuing Decision No. 1231/QĐ-TTg dated 07/9/2012) which specified numerous solutions to boost SMEs by various means necessary to improve the SMEs businesses (Hoang, 2016). Furthermore, currently the Vietnam government is drafting specific legislation designed to formulate policies and programs in a selective manner to support SMEs as suitable to the nation's economic development in order to create competitive advantages to SMEs. However, the specific legislation has not been adopted to date (Vietnam Magazine, 2016).³

2.3 Comparison on Laws on SMEs promotion in Vietnam and Thailand

Regarding the above discussion on laws and policies supporting SMEs in Vietnam and Thailand, it is apparent that:

- Vietnam and Thailand have similarly adopted SMEs promotion laws. The governments of both countries have established policies which stimulate the increase and development of SMEs. There are government programs which support SMEs in acquiring loans, credit guarantees, sharing of business information, etc.

- One point of difference between the countries is that Thailand appears to have more legal and institutional mechanisms for SMEs promotion. It is because Thailand has adopted specific legislation which deals with all issues on SMEs development. Thailand based on its specific laws has established the SMEs Commission which will have authoritative power to set up national plan on SMEs promotion. Consequently Thailand is different from Vietnam in that the Vietnam government has not adopted its specific laws on SMEs promotion nor has the government specified institutions which will establish policy on SMEs.

3. LAW ON FAIR COMPETITION FOR SMES IN VIETNAM AND THAILAND

3.1 Law on fair competition for SMEs in Thailand

In Thailand, the law on fair competition for SMEs is based on the Thai Competition Act B.E. 2542 (1999) (hereinafter known as the “Competition Act”) which contains important chapters prohibiting anticompetitive conduct. The Competition Act, section 25 addresses the abuse of dominant market power by prohibiting businesses occupying dominant market positions to refrain from any anticompetitive conduct deterring market competition and other enterprises, especially SMEs.⁴ The Competition Act, section 27 prohibits any anticompetitive cartels or agreements which deter market competition and other business enterprises.⁵ The Competition Act, section 29 broadly prohibits unfair competition through destroying,

³ Ibid

⁴ Thai Competition Act 1999 section 25 subsection 1,2,3, and 4

⁵ Thai Competition Act 1999 section 27 subsection 1-10

impairing, and obstructing, impeding or restricting business operation of other business operators.⁶ Thus, when considering fair competition for SMEs, Thailand has adopted the necessary acts as to ensure a level playing field for all and to protect SMEs being exploited by large businesses.

However, in Thailand, the written law and the law in the implementation and enforcement context differs significantly. The Competition Act since its enactment in 1999 has not been enforced against any cases of anticompetitive conduct, though there have been various documented complaints from SMEs (Wisuttisak, 2011). SMEs complaints are regarding unfair business conditions when they have to deal with large corporates and when they face cartel conduct which has created barriers to market entry. The most important issue is that the SMEs in retail sectors are not able to compete with local and foreign modern retail corporates. With the ineffective enforcement by the government to the intutional problems, the retail sectors and the SMEs are prone to be faced with anticompetitive conduct from large-modern corporates, without any protection from the Competition Act. At this stage, the Competition Act is under reform process in Parliament. The draft of the new Thai Competition Act –has been under the Parliamentary consideration since June, 2016. However, it is still unclear how the draft of the new act would read and when it would be passed by Parliament.

3.2 Law on fair competition for SMEs in Vietnam

In Vietnam, law on fair competition for SMEs is under the provisions the Vietnam Law on Competition No. 27-2004-QH1 (hereinafter known as the “Law on Competition”). Article 8 of the Law on Competition prohibit any business agreements which create a restraint on competition. The prohibitions according to article 8 refer to all cartel or anticompetitive agreements among businesses in Vietnam. The agreements of any business both large or SMEs which lead to restraint of trade in the market will be subjected to violation by the Law on Competition.

In addition, article 13 of the Law on Competition prohibits large dominant business to conduct unfair business, such as, fixing unreasonable prices, discriminatory business activities and imposing unreasonable business conditions.⁷ The Law on Competition prevents concerns over exploitative conduct and exclusive conduct. The exploitative conduct, in the law, means conduct that relates to harm to the consumers’ interest while the exclusive conduct relates to the difficulty to market competitors. SMEs in having to compete or deal with dominant business are able to rely on the Law on Competition when they have are faced with any unfair conduct from dominant businesses.

The Law on Competition, since its enactment, has been enforced against dominant state enterprises. One example is the Vinapco case which involved anticompetitive conduct and condition to other businesses (Dung and Son, 2016). The Vietnam competition authority basedon its investigation imposed financial penalty to Vinapco at the rate 0.05% of revenue of preceding fiscal year 2007 in which violation taken place (Dung and Son 2016). The case significantly implies the enforcement of the Law on Competition against the dominant business which deterred market competition and the growth of smaller businesses.

⁶ Thai Competition Act 1999 section 27

⁷ Law of Competition 2004 (Vietnam) Article 13 (an incomplete citation)

The enforcement of the Law on Competition creates an important move to increase business awareness on competition law (Phuong, 2015). With regard to SMEs, the enforcement of the Law of Competition which focuses on abuse of dominant businesses is a supportive mechanism for SMEs protection.

3.3 Comparison on Law on competition for SMEs protection in Vietnam and Thailand

According to the brief discussion on the law on competition above, Vietnam and Thailand have:

- Both countries have similar competition rules which promote free and fair competition in their market economies. The legislation on competition law will provide legal mechanisms to SMEs in market in case the SMEs have to face unfair competition from dominant firms. The law on competition is vital where dominant firms unfairly conduct business affecting SMEs. The examples are that dominant firm sets up the unfair condition to SMEs businesses. The SMEs may be able to obtain a remedy provided by competition law to protect SME's businesses.
- However the countries have a different approach on competition law implementation and enforcement. While Thailand has ineffective implementation and enforcement of competition law, Vietnam has at least enforced the law on competition to deal with unfair issues in market. The ineffective enforcement of the Thai competition law results in a lack of legal enforcement to protect SMEs from unfair competition. The issue has been widely seen in retail sectors where large retail corporates in Thailand are able to deter SMEs and remove SMEs from markets. Although, it is accepted that large corporates have more business efficiency than SMEs, in some cases, large corporates use this strategy unfairly to remove SMEs from the market.
- Both countries have similar concern over increasing investment from ASEAN market integration. The ASEAN market integration is under way to combining the market economy of all ASEAN members. However, when the large corporates are able to enter markets, SMEs in all member countries, may have to meet with the rise of unfair competition. The enforcement of competition laws and policies will be a vital legal tool to protect SMEs and the fair market competition in Vietnam and Thailand.

4. CONCLUSION

Through the analysis of the law on SMEs promotion in part 2 and law on fair competition for SMEs in part 3, it can be ascertained that Vietnam and Thailand have some similar legal elements in terms of SMEs promotion and protection. SMEs are considered the backbone of market economy of both countries. Due to the importance of the SMEs in the market economy, Vietnam and Thailand have adopted laws and policies which can support the SMEs continued development. However, compared to Thailand, Vietnam has not adopted specific laws for SMEs promotion. This is different from Thailand that has adopted the SMEs Promotion Act that establishes the SMEs Commission as the main agency which has the authority to establish

and regulate a national development plan for SMEs. Thus, it would be in the interest of the SMEs that Vietnam should pass the specific legislation that can unify regulatory and policy mechanisms stimulating SMEs development in Vietnam market economy. Also, the specific law should establish a special agency which has regulatory roles to supervise and plan SMEs development in Vietnam. The law with government support should help to develop SMEs (Rufino, 2015).

Vietnam and Thailand have also passed competition rules to protect fair market competition. Both countries have similar legal components of competition law to deal with unfair dominance conduct and unfair business agreements. However, when focusing at the enforcement of competition law, Thailand has not enforced the competition law and it does not guarantee SMEs protection. The law has not been enforced to protect SMEs when faced with unfair conduct from dominant corporates. The ineffective enforcement is one of the factors leading to the situation that large corporates become larger and SMEs are driven out of the market economy. Therefore, reforms and preparation of competition laws in order to deal with increasing issues of unfair competition affecting SMEs in both Vietnam and Thailand are required. The reforms and preparation should be focus to create competition law awareness among SMEs and the governments must be strict, transparent and fair in investigations to unfair issues affecting SMEs in markets.

Finally, the law on SMEs promotion and law on competition should take into consideration the efficiency of the market economy. The laws should be framed toward harmonized legal mechanisms which improve competitive efficiency, consumer interests and business interests. The harmonization between the SMEs promotion law and competition law would then lead to an overall economic development in Vietnam and Thailand.

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