

# INTERNAL PROCEDURES OF THAILAND IN CONCLUDING OF AN ASEAN AGREEMENT

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**Workshop on Treaty Management in International Organisations:  
Lessons Learnt and ASEAN Practice  
2 December 2016**

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# Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014)

- ❖ **Principle:** (Section 23 P1) the Cabinet has the prerogative to conclude treaties with other countries or international organisations.
- ❖ **Exception:** (Section 23 P2) treaties that must further seek approval from the National Legislative Assembly
  - Treaties that provides for a change in the Thai territories or the external territories over which Thailand has sovereign right or jurisdiction under a treaty or international law
  - Treaties that requires the enactment of an Act for its implementation
  - Treaties that have wide-scale impact on the economic or social security of the country

# Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014)

- ❖ **Definition:** (Section 23 P3) treaties which have wide-scale impact on the economic or social security of the country mean:
  - Treaties on free trade
  - Treaties on customs union
  - Treaties on the permission to utilise natural resources, or which causes the loss of rights over natural resources in whole or in part
  - Any other matters provided by law.
- ❖ (Section 23 P4) Where a question arises as to whether any treaty falls under paragraph 2 or paragraph 3, the Cabinet may request the Constitutional Court to make a decision.

# Rules of Procedure for Conclusion of International Agreements by ASEAN

- ❖ Adopted by the ASEAN Coordinating Council on 16 November 2011
  - Specifies the procedure for the conclusion of international agreements by ASEAN as an intergovernmental organisation in the conduct of external relations as provided by Article 41(7) of the ASEAN Charter
    - “ASEAN may conclude agreements with countries or sub-regional, regional, regional and international organisations and institutions. The procedures for concluding such agreements shall be prescribed by the ASEAN Coordinating Council in consultations with the ASEAN Community Councils.”
  - Does not apply to the conclusion of international agreements concluded by all ASEAN Member States collectively and which creates obligations upon individual ASEAN Member States

# Agreements by ASEAN as an Intergovernmental Organisation

- ❖ Does not create direct obligations under international law for Thailand
  - Not considered as Thailand concluding treaties under Section 23 of Thailand's Constitution
  - Subject to the Thai Cabinet's approval in accordance to Section 4 (7) of the Royal Decree regarding the submission of matters and meetings of the Cabinet B.E 2548 (2005)  
“Matters related to international relations or related to international organisations which has binding effect on the Thai Government”

# Agreements Concluded by ASEAN Member States Collectively

- ❖ ASEAN Agreements signed by ASEAN Member States
- ❖ Creates direct obligations upon Thailand
- ❖ Considered as Thailand concluding treaties under Section 23 of Thailand's Constitution

**Not under Section 23  
paragraph 2 of the Constitution**



Cabinet approval to sign / ratify

**Under Section 23  
paragraph 2 of the Constitution**



Cabinet approval to further seek approval from the National Legislative Assembly



National Legislative Assembly approval to sign/ratify

# Mandates for Negotiations

**The Cabinet Resolution dated 7 July 2015**

**The mandates for negotiations on the matters that will have an impact on international relations and result in a long-term commitment, have to be beforehand approved by the Cabinet**



**In accordance with Section 4 (7) of the Royal Decree regarding the Submission of Matters and Meetings of the Cabinet B.E. 2548 (2005)**

# The Draft Thailand's Constitution

## Section 178

- Passed referendum on 7 August 2016 and awaiting the Royal Assent
- Similar to Section 23 of the Thailand's Constitution (Interim) B.E. 2557 (2014)
- Has an additional paragraph stipulating that:

“There shall be a law prescribing the procedure for public opinions and for necessary remedy for the impact of the conclusion the treaties under paragraph 3\*”

\* Treaties that has wide-scale impact on the economic or social security of the country



**Thank you**