STIMULATING FDI – ESSENTIAL FOR COVID 19 ECONOMIC RECOVERY
23 NOVEMBER 2020

The European Association for Business and Commerce (EABC) acts as a 'Eurocham Thailand', as the leading voice of European business in Thailand. EABC's mission is to promote trade and foreign investment between Thailand and Europe, the EU being Thailand's fifth largest trading partner. EABC's geographical scope is the European Economic Area (EEA), which encompasses the EU, EFTA and the UK. EABC has taken a keen interest in business continuity through its 'Business Continues' compendium, and also in supporting economic recovery during this COVID 19 period.

Executive Summary

i) Changes to List 3 of the Foreign Business Act have not kept up with changes in the market or the economy. This holds back Thailand's competitiveness and serves as a barrier to attracting investment, which inhibits Thailand's ability to recover from its most severe economic crisis in living memory.

ii) It is essential to attract new FDI inflows and support existing investments by way of expansion and flexibility. A message that Thailand is open for business is essential to avert business failure, loss of Thai jobs and shore up trust and confidence in Thailand as an investment destination.

iii) Opening up List 3 will thus be a key tool in economic recovery, and the change would alleviate pressure on economic recovery budget.

iv) EABC proposes that List 3 be suspended for three years (roughly the expected period for return to pre-COVID-19 levels of growth), and during that period effect permanent removals in three stages, which are specified in this Proposal. After the three-year suspension ceases, a revised List 3 reflecting certain permanent removals would be the result, with investor protection (grandfather status) for any investments during the suspension period.

Necessity for FDI

Prior to the pandemic, in January 2020, at the launch of the Thailand Economic Monitor, the World Bank forecast GDP growth for 2020 at 2.7% (after a 2019 out-turn of 2.4%). In order to have a chance of achieving high-income status within the expected time frame (2037), the World Bank recommended productivity enhancement and greater FDI (including through service sector liberalisation). In the period since, more immediate COVID-19 survival and economic support measures have crowded out long-term strategic goals.

Yet, government stimulus measures are unsustainable past the short to mid-term. Implementation of these strategic and longer-term goals is amongst the very things necessary for post COVID-19 economic recovery. Liberalisation of services is not only a means of overcoming the middle income trap, but also vital for stimulating industries and economic recovery. This not only applies for new projects but ***expansion of existing investments***, ***saving existing investments*** and ***keeping Thai jobs.***

Current average GDP forecasts for the Thai economy are in the –8% to –10% range for 2020. Post-COVID-19 growth rates will depend on how deep the eventual downturn is in 2020 and how well-equipped Thailand is to support economic recovery through FDI and other measures. Contraction and growth rates aside, ***pre-COVID-19 GDP levels are not expected to be achieved for at least two to three years***.

For a long time, economists, business groups (local and foreign) and others have recommended ***removal of items from List 3*** of the FBA; however, there have been only four groups of removals since 1999, when the FBA came into force (in 2013, 2016, 2017, and 2019), the result of most of which has not materially advanced liberalisation due to other legislation covering the same topics or as the changes have been small. List 3 is designed to protect local industries not ready to compete, but the fact is that many are ready to and do compete. The underpinnings of the FBA date back to the early 1970s, almost two generations ago. Since then, ***significant educational and economic modernization has occurred***, and Thai companies in many industries are ready to successfully compete and achieve global success.

Under this guise, it is no longer a matter of protecting local industry, which is said to be not ready to compete, but gives cover and support to uncompetitive practices, holds back necessary reforms and weakens the companies involved, weakens their sectors and weakens the economy.

SMEs are the backbone of the economy. While BOI has objectives under the Investment Promotion Act, it has targeted activities and only a small percentage of SMEs are under BOI promotion. BOI is thus not regarded (properly) as the key force in industry liberalisation. SMEs need the ability to compete fairly.

EABC made a major submission dated 29 June 2018 about the importance of taking action on List 3 and reviewing certain points in Lists 1 and 2. That proposal is found here https://www.eabc-thailand.org/news/advocacy/foreign-business-act-unlocking-the-economy/. Since then there has been only one additional change (in 2019) to List 3, to remove intra-group services.

EABC appreciates the current plans (November 2020) to remove three types of businesses from List 3, namely telecoms category 1 operator licence, certain intra-group treasury functions and certain kinds of software development. As the Ministry has stated, most are already covered by other regulation. Any enhanced ease of doing business is of course valued; however, in the overall scheme these changes are unlikely to have much impact. A far bolder step is needed in order to have an impact on economic recovery.

If Thailand wishes to stay regionally competitive, EABC recommends considering new approaches and fresh trade-in-services strategies. Neighbouring economies have acceded to treaties or entered new treaties. Thailand must ***avoid at all costs the trade and investment diversion of her prominent and successful global value chains (GVCs)*** – for example: in goods, the automotive value chain, and in services, hospitality and tourism. If sectors in the Thai economy do not allow transfer of new technologies or new service industry paradigms, they are ***not likely ever to get ready to compete***. Thailand would be out-competed and would never get out of the "middle income trap".

Getting ready requires retooling by opening up for modernization and competition, welcoming those foreign businesses that can help train Thai companies deliver world-class services and products, and also get Thai companies up to speed in areas where in the past they may not have been competitive. Thus, ***competition should not be shunned; rather, many sectors and companies would do well from competition.***

EABCs proposed changes – why?

1) FDI is essential for post-COVID 19 economic recovery. It stimulates economic activity and alleviates pressure on economic recovery budget.

2) Ventures, including joint ventures, need the flexibility of existing or new foreign partners taking up majority positions to support local investors facing cash flow challenges and other difficulties. With flexibility and relaxations, markets will find ways to support business continuity and survival.

3) Supports the retention and creation of Thai jobs. Foreign ventures and foreign-local ventures are significant employers of Thai workers, including in upcountry areas and on the Eastern Seaboard.

4) Support of existing investment positions, as well as new investment, will cement investor loyalty to Thailand and would be a show of trust and confidence.

5) Avoids deferring the uplift in Thailand's competitiveness. Most sectors in List 3 show readiness to compete, continuing to protect them will not assist in economic recovery.

Other barriers to doing business

The Foreign Business Act regulates activities of businesses having more than 49% foreign ownership. There are two other layers of regulation, which should be reviewed in order to stimulate skills development and better support foreign investment. These apply to individuals and can render the investment less valuable if not addressed:

- An April 2020 Notification about 39 professions not open to foreigners, which replaces a 1979 Decree;
- Profession-level restrictions on activities.

For immediate purposes, we focus on activities of businesses – i.e. List 3 of the Foreign Business Act.

Recommendations

The scale and depth of the economic crisis demands bold action. Serious consideration should be given to suspending the whole of List 3 (with possible minor exceptions which we invite the Ministry of Commerce to identify) for a period of three years to give the best possible chance for this means of supporting economic recovery.

Under such an umbrella, we also propose to prioritize areas of focus, in stages, for permanent removal:

Stage 1:

- Services – logistics;
- Services – engineering (item 9), with clearance to participate locally and tender for publicly-owned, privately-funded capital projects and infrastructure.

Stage 2:

- Accounting services business (item 6);
- Architectural services business (item 8);
- Item 21 of List 3: We recommend removal of this 'catch all'; and invite MOC then to propose and support only a limited number of specific areas which should not be so removed. In particular the following should be specifically removed:
    - All business support services of any kind (many of which are BOI promoted), including standard and advanced BPO, call centres, fulfilment centres and TISO whether in support of regional HQ or similar or otherwise be removed from List 3, in addition to those provided on an intra-group basis;
    - Insurance services;
    - *All* software development;
    - Research and Development;

- Education services (primary, secondary, tertiary);
- Retail with capital limits as described in item 14;
- Wholesale with capital limits as described in item 15.

Stage 3:

- Hotel business (other than hotel management service). (Item 17);
- Telecoms – not just category 1. It is recommend that—In order to give full effect to the spirit of removal from List 3—the Telecoms Business Act, which restricts foreign investment in category 2 and 3 licences, should also allow greater foreign equity and the Foreign Dominance Notification be ceased.

Investments made during the suspension period would have the normally expected investor protections; a kind of grandfather status, such that even if such business activities were not permanently removed from List 3, the original investment would continue to be honoured. List 3, at the end of the suspension period (at which time the suspension would cease), would, per EABC's recommendations, reflect the permanent removals as proposed.

How:

A Ministerial decision is needed (in practice this has been supported by a cabinet decision) to change List 3. Under the current State of Emergency, the Prime Minister has powers under the FBA, as we understand it, by suspension or removal.

A. Effect a suspension of the whole of List 3 as an urgent matter (save possibly for a limited negative list of items specifically designated by MOC) for three years; and

B. Remove permanently the items in the recommendations from List 3, by stages over the three-year period.

We would value the opportunity of a dialogue on these matters.

EABC
23 November 2020

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