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THAILAND

Newsletter

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Thailand's FDI Landscape Emerging Trends and Potential Exemptions

It is undeniable that foreign direct investment (FDI) offers immense benefits as it contributes to economic growth and addresses unemployment issues. On the other hand, FDI could also lead to undesirable outcomes, such as the limited capacity of the locals to compete with foreign investors, particularly in less developed countries. Most countries now have adopted varying degrees of FDI restrictions, depending on their economy's competitiveness, and particular concerns over national security.

Prior to the Covid-19 outbreak, several Southeast Asian countries were known for their strict FDI policies, characterized by stringent measures, investment screening regulations, and additional requirements in their FDI laws. The primary aim of these policies was to safeguard local operators, national resources, and national security. Consequently, these policies increased the difficulties and costs for foreign investors, and, in some cases, even completely prohibited foreign investors from operating certain activities, ultimately posing obstacles that delayed the overall economic growth of the country.

Asia's FDI trends

In response to the significant decline in FDI following the Covid-19 pandemic, there has been a shift in the trends of the FDI policies in Asia, with many countries beginning to liberalize their regulations. We are now witnessing an unprecedented change in FDI policies across various countries, aiming to attract foreign investors as they strive to recover and revitalize their economies.

A notable example of the trends is the recent modification in China's foreign investment law, which ensures that foreign investors are treated equally to local operators, except for some businesses specified under the negative list. Similarly, India has shown proactive efforts to liberalize its investment framework to attract more FDI.

Latest Development in Thailand: Draft Ministerial Regulation re: Exemption for Certain Restricted Businesses

For certain areas, it is obvious that Thailand has also embraced the FDI liberalization trends.

As one of the latest movements, following the four predecessor ministerial regulations that exempt some businesses from restrictions under the Foreign Business Operations Act, B.E. 2542 (1999) ("FBOA"), Thailand is now holding a public hearing on the draft of the fifth ministerial regulation. This draft aims to align with commercial practices and provide even more flexibility for FDI in the following business activities, where foreign investors are currently heavily investing, and Thai operators have capacity to compete with such foreign investors:

- Telecommunication services under Telecommunication License type 1 under the telecommunications law;
- Treasury center services under the exchange control law;
- Software development businesses, in particular:
 - Big data or data analytics software including predictive analytics software;
 - Cybersecurity software;
 - Advanced technology equipment controlling or synchronization software; or
 - Advanced technology industrial software;
- Administrative, human resources and information technology management services for certain affiliated companies;
- Domestic guarantee business for certain affiliated companies;
- Partial space lease for installing automated financial service machines and automated vending or other services machines, to facilitate the employees;
- Petroleum drilling services;
- Other businesses governed by the securities and exchange laws, such as the provision of loans secured by securities under securities and exchange laws; and
- Other businesses governed by the derivatives laws, such as agent, broker, advisor or fund management under the derivatives laws.

As of the date of this article, the draft is currently undergoing a public hearing, which will close on 15 March 2024.

Last Thoughts

Currently, Thailand is gradually liberalizing its FDI regulations in relation to specific industries to support both new and existing foreign investors in operating their businesses in Thailand. This can be achieved through various initiatives, including the business promotion activities of the Board of Investment of Thailand. These small piece-meal steps towards FDI liberalization hold the potential to create a positive environment for new investments, fostering hope that Thailand will continue on this path of progress.

Once the draft ministerial regulation has been enacted or other significant progress is made in the area, we will provide timely updates. If you have any inquiries regarding this article, please reach out to the authors, whose contact information is provided in the left-hand column.

This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited. If you should have any inquiries about the publications, or would like more information about Chandler MHM Limited, please contact bd@mhm-global.com.

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