



Guide on Doing Business in Thailand

Webinar for SUCCESS, Trade and Industry Department, HKSAR

Presented by Benedict Yong, Baker McKenzie, Bangkok

27 September 2021

PRIVATE AND CONFIDENTIAL

Agenda

1. Introduction to Thailand

2. Setting up in Thailand

3. Introduction to Baker McKenzie



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Introduction to Thailand

Thailand market introduction (1)

- Generally **open-door** foreign investment policy
- **Pro-business** policies
- **Popular with expats** due to quality of life and reasonable cost of living
- **Hub of mainland SE Asia**, a gateway to Cambodia, Laos, Myanmar and Vietnam
- Close to **China and India**
- Member of **Asean Economic Community** - market of 660 million consumers
- Various **Free Trade Agreements** signed, including with China; Regional Comprehensive Economic Partnership targeted for ratification during 2021

Thailand market introduction (2)

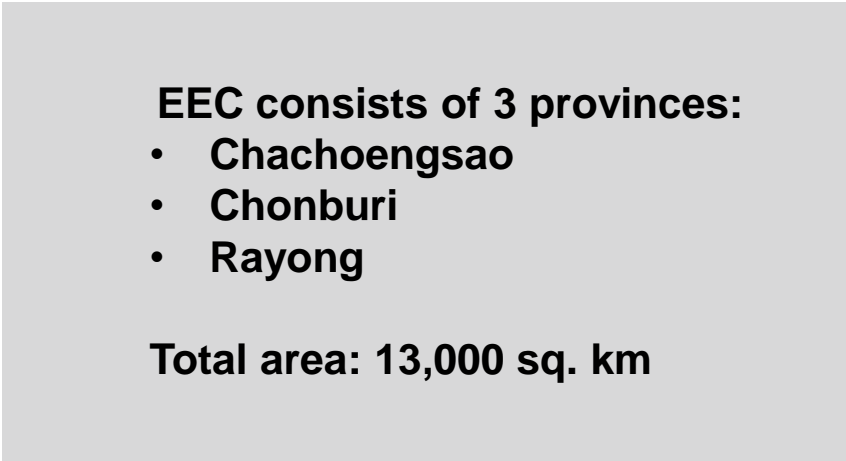
- Population 66.19 million in 2020 (source: BOI)
- Very receptive to digitalization, especially mobile services. In 2020, 132.59 million mobile subscribers (source: BOI)
- Workforce 38.78 million (Q2/2021), majority under 35 years old (source: BOI)
- Minimum daily wage: currently 313 - 336 THB (USD 9.36 - 10.04) (source: BOI)

Economic growth and outlook

- Economy grew in Q2 by 7.5% (YoY), compared with 2.6% contraction Q1. Expansion in Q2 mainly supported by export of goods (source: NESDC)
- Outlook of Bank of Thailand:
 - 2021 – GDP growth in the range of 0.7 – 1.2%
 - 2022 – GDP growth of 3.7%
- Main industries include:
 - automotive manufacturing, electrical and electronic goods manufacturing
 - tourism
- Thailand welcomes all industries but now seeks to focus on more **advanced, environmentally-friendly** industries

Eastern Economic Corridor (EEC)

- Thailand 4.0 strategy aims to lift Thailand out of middle-income trap, to compete against wealthier, more knowledge-based economies
- Government aims for EEC to be a regional hub for transportation and logistics, the gateway to Asia
- New infrastructure includes:
 - new airport, new seaports
 - digital parks, medical innovation centers
 - high-speed rail to link the new airport with Bangkok's two international airports
- EEC policy emphasises 12 promoted industries, e.g. automation, digital, intelligent electronics, next-gen automotive



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EEC's 12 promoted industries

1. next-generation automotive
2. intelligent electronics
3. advanced agriculture and biotechnology
4. food for the future
5. high-value and medical tourism
6. automation and robotics
7. aviation and logistics
8. medical and comprehensive healthcare
9. biofuel and biochemical
10. digital
11. defense
12. education and human resource development

Summary of privileges

(source: EEC)

- **Corporate income tax** holidays 5-10 years; 50% CIT reduction up to 5 years
- **Import duties** - exemption of import duties on machinery
- **Raw materials** - exemption of import duties on raw materials for production and R&D
- **Personal income tax** for expats and families - 17% flat rate
- **Land and properties** - can own for business operations and for residential purposes
- **Can lease/sub-lease/lease-out** land or real estate within promoted zones in EEC for 50 years; can renew upon approval for 49 years
- **Immigration:** Foreign staff, including spouses and dependents, can enter and reside Thailand for longer than stipulated in immigration law

International Business Center



Aims to encourage companies to use Thailand as a regional hub for back-office operations or trading activities

Incentives include:

- Permission for foreign majority shareholding without having to get a Foreign Business Licence
- Tax incentives (but a condition of high annual expenditure)



2

Setting up in Thailand

2.1 Before incorporation...



Before incorporation...

1. Consider **foreign investment regulations**; verify what **licences** are required
2. Consider **investment incentives**, e.g. tax incentives, permission to own land, foreign majority shareholding
3. Conduct **business due diligence**, e.g. availability of suppliers, location of premises, availability of workers

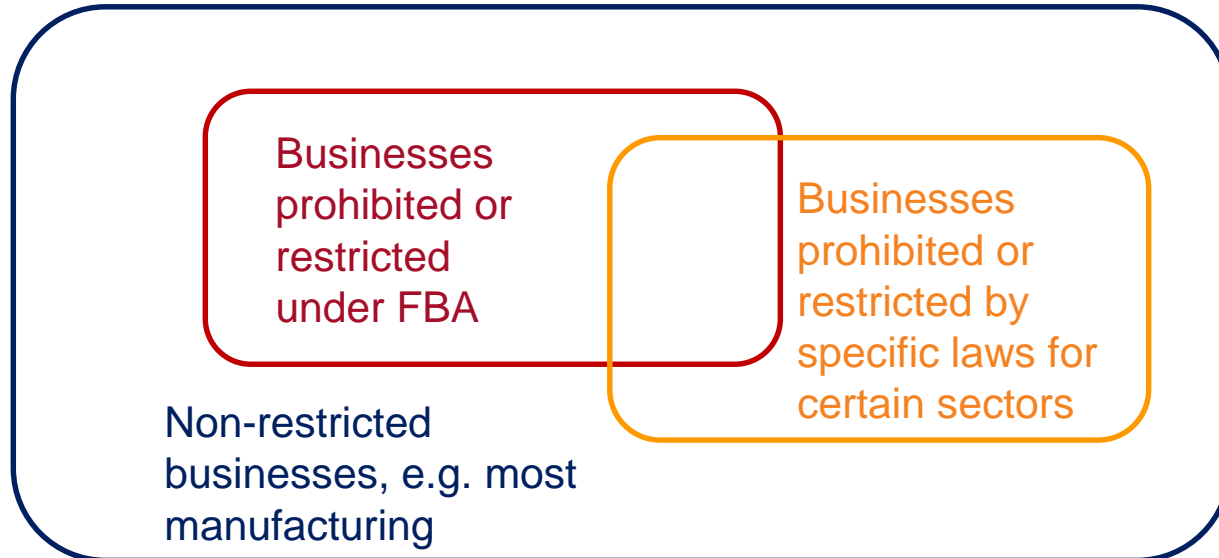
2.2 Foreign investment regulations



Foreign Investment Regulations

- Foreign Business Act (FBA) is the main law
- Specific laws for certain sectors, e.g. banking, insurance, transport

Foreign investment regulations



Foreign Business Act 1999

- Foreign Business Act (“FBA”) prohibits or restricts foreigners from engaging in certain businesses listed in Schedules 1 to 3
- Applicable to “foreigners”
- Definition of “foreigner” includes companies established in Thailand in which foreigners hold **at least 50% of the shares**
- Foreign entity definition is based on share capital (50% or more), **not** voting rights, control, or number of foreign directors

Foreign Business Act

Prohibited, restricted businesses under the FBA

Schedule 1

- Prohibited for special reasons (e.g. land dealing)
- Foreign Business Licence **not** available

Schedule 2

- Restricted due to national security, natural resources, etc. (e.g. mining), but FBL available
- Foreign shareholding permitted up to 75%
- At least two-fifths Thai directors required

Schedule 3

- Restricted but may get FBL
- E.g. services, agency, retail with <100 M THB capital, wholesale with <100 M THB capital (about 3 M USD)
- Catch-all for services
- Issued case-by-case
- Up to 100% foreign shareholding permitted
- No Thai directors required

If intended business is a restricted business, then consider....

- If restricted business is listed under Schedule 2 or 3, must apply for a **Foreign Business Licence** beforehand
- Or, apply for promotion from the Thailand **Board of Investment**
 - If eligible, BOI promotion provides exemption from having to obtain FBL
- Or, Thai majority shareholding by a JV partner

2.3 BOI investment promotion



What is the BOI?

Board of Investment is a Thai government body:

- Responsible for promoting foreign and domestic investment
- Holds wide discretion to encourage investment in areas considered to be most beneficial to economic and social development

BOI Incentives

BOI offers two types of incentives

Activity-based incentives

- Tax privileges
- Non-tax privileges



Merit-based incentives

- Additional years of corporate income tax (CIT) exemption for additional spending, e.g. R&D, donations to educational institutes, investment in local suppliers

BOI Incentives (cont.)

Tax privileges

E.g.

- Exemption or reduction of CIT
- Exemption or reduction of import duties on machinery

Non-tax privileges

E.g.

- Foreign majority ownership
- Right to own land
- Right to employ foreign experts

Common issue

- Conducting service activities **without** a Foreign Business Licence
 - *i.e. investors tend to think, “We are granted BOI promotion, so we can do the following activities.” But*
 - Repair & maintenance of machinery
 - R&D service
 - Other services, e.g. back office services for affiliates
 - Wholesale and/or retail which do not satisfy the minimum capital requirements

Examples of solutions (1)

- BOI's International Business Center (IBC)
 - **Scope:** R&D, marketing and sales support, back office services (does NOT mean all services) to group companies
 - **Conditions:** Provide services to affiliated companies; registered capital at least THB 10 m (about 330,000 USD); at least 10 employees
 - **BOI:** Mainly non-tax incentives
 - **Tax incentives:** Provided by Revenue Department, under similar (but not entirely same) criteria

Examples of solutions (2)

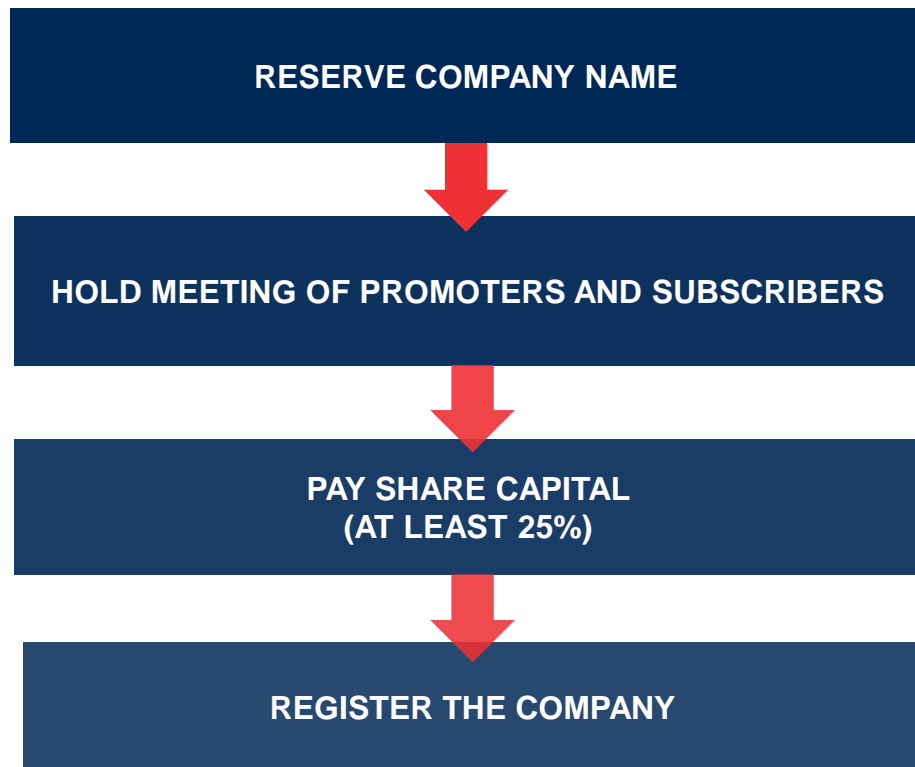
- BOI's Trade and Investment Support Office (TISO)
 - **Scope:** e.g. (a) services to affiliates and group companies, (b) advisory services on business operations (with some exceptions), (c) installation, maintenance and repair of machinery, importing machinery for wholesaling, etc.
 - **Conditions:** Annual selling and admin expenses at least THB 10 million (approx. USD 300,000), and others
 - **BOI:** Non-tax incentives only, e.g. foreign majority ownership

2.4 Incorporation



Registration of a company in Thailand

(Simplified)



Overall process
normally takes
3 - 4 weeks



Takeaways

1. Thailand welcomes investment, especially in the 12 promoted industries
2. BOI offers privileges; watch out for Foreign Business Act
3. Incorporation procedures fairly straightforward; seek advice on foreign investment regulations and licences first



3

Introduction to Baker McKenzie

Our Bangkok Office



INCEPTION

Bangkok 1977



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- 240+ Legal Professionals
- 240+ Non-Legal Business Professionals



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6 partners
10 associates



Melbourne
22 partners
53 associates



Sydney
58 partners
118 associates

East Asia



Beijing
5 partners
15 associates



Hong Kong
53 partners
131 associates



Seoul
3 partners
5 associates



**China –
FenXun***
12 partners
85 associates



Shanghai
7 partners
22 associates



Taipei
40 partners
34 associates



Tokyo
44 partners
97 associates

*Baker McKenzie FenXun (FTZ) Joint Operation Office

Southeast Asia



Bangkok
60 partners
180 associates



**Ho Chi Minh
City**
6 partners
21 associates



**Kuala
Lumpur**
15 partners
58 associates



Singapore
27 partners
106 associates



Hanoi
2 partners
21 associates



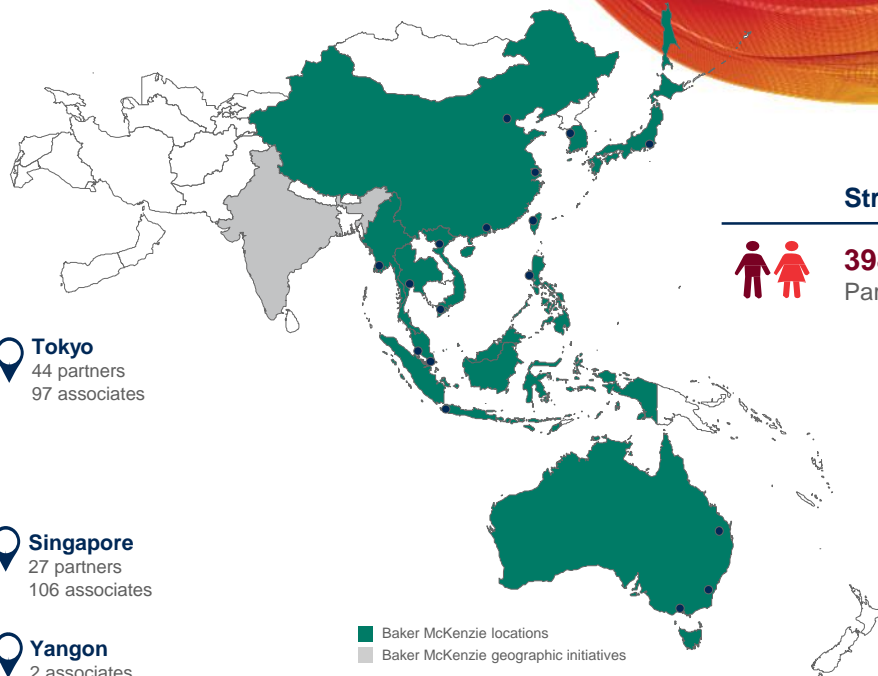
Jakarta
17 partners
93 associates



Manila
21 partners
39 associates



Yangon
2 associates
2 paralegals



Strength in Numbers



398
Partners



1,150
Associates



1,548
Region

Note: Headcount as of September 2020.
Headcount for Associates includes Of Counsels.



What others say...

Chambers Asia Pacific 2021, Ranked in 14 jurisdictions in Asia Pacific across more than 30 areas of law, with 205 lawyers ranked

Chambers Asia Pacific Awards 2021, ASEAN Law Firm of the Year, Thailand Law Firm of the Year and Vietnam Law Firm of the Year

In-House Community Firm of the Year Award 2021, Most Responsive International Firm of the Year for the 12th consecutive year in more jurisdictions than any other law firm across Asia Pacific.

Acritas Global Elite Law Firm Brand Index 2021, Baker McKenzie has been named as the strongest law firm brand for 11 consecutive years

Speaker profile



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Ben has been active in the Corporate and M&A Practice Group, in both Bangkok and in his hometown, Melbourne, Australia.

For more than 20 years at Baker McKenzie, he has assisted many international clients with establishing and acquiring businesses, managing operations, and reorganising group companies in a variety of business sectors, such as electrical products, semiconductors, food processing, consumer products, IT services, logistics, jewellery, retail, and energy technology.

He has often presented on key legal updates and issues relating to investment in Thailand at various forums domestically and abroad, like client seminars, client roadshows, and events of government and business bodies.



Thank you!