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MAHANAKORN PARTNERS GROUP

2020

FDI Incentives & Doing Business in Thailand

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Opportunities and Pitfalls of FDIs in Thailand

Strategically located in the heart of the Mekong region with modern infrastructure, a skilled and cost-effective labor force, strong exports, and easy access to raw materials, Thailand has become a worthy candidate for the regional hub status. As a result, a number of tax and non-tax incentives were introduced in an effort to attract foreign direct investment from both SMEs and multinational corporations. Thanks to a streamlined company set-up process, transparent legislation, open economy, and government policies favorable to Foreign Direct Investment (FDI) and free trade, doing business in Thailand is now easier than ever.

Thailand's stock market has shown signs of resilience and steady growth in the last decade, attracting investment into equities, expanding its listed firms' combined market capitalization by 51.21% from 2010 to 2019[1].

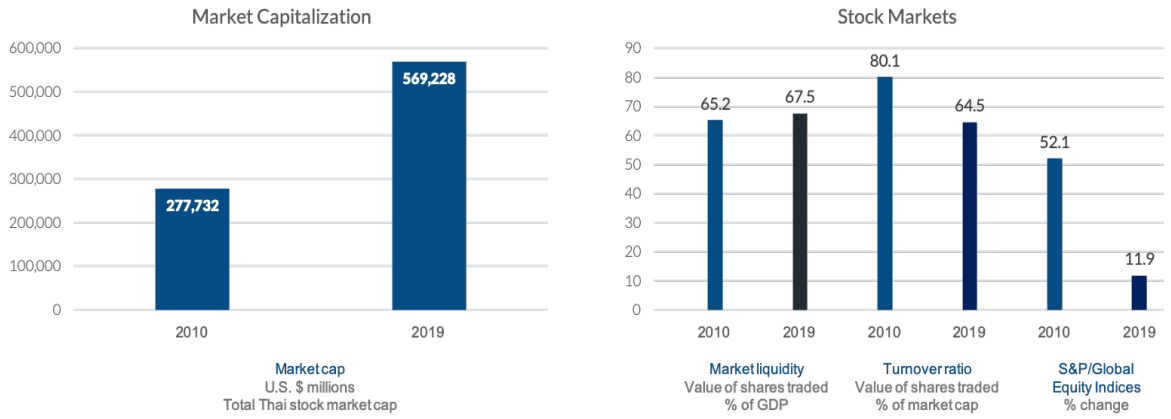


Figure 1: *World Development Indicators: Stock Markets*[2]

One of the few obstacles to FDI in Thailand is the Foreign Business Act of 1999 ("FBA"), which regulates the investment activities foreign companies may engage in. While some activities are completely prohibited to companies that exceed the 49% limit on foreign ownership, some may be engaged in with prior approval from a designated government agency, and some do not require any special approval at all. Under the FBA, if foreigners wish to engage in activities where Thai companies are not yet ready to compete, such as legal services or accounting, the foreign company must obtain a Foreign Business License before it begins operations. Another challenge foreign investors may face is acquiring capital from Thai banks, which are generally wary of lending to smaller foreign entities; however, these barriers are easily surmounted with skilled assistance, and should not deter businesses from entering the Thai market.

[1] Source: Mahanakorn Partners Group research, 2020.

[2] Source: Mahanakorn Partners Group elaboration of World Development Indicators: financial access, stability and efficiency, World Bank, 2020.

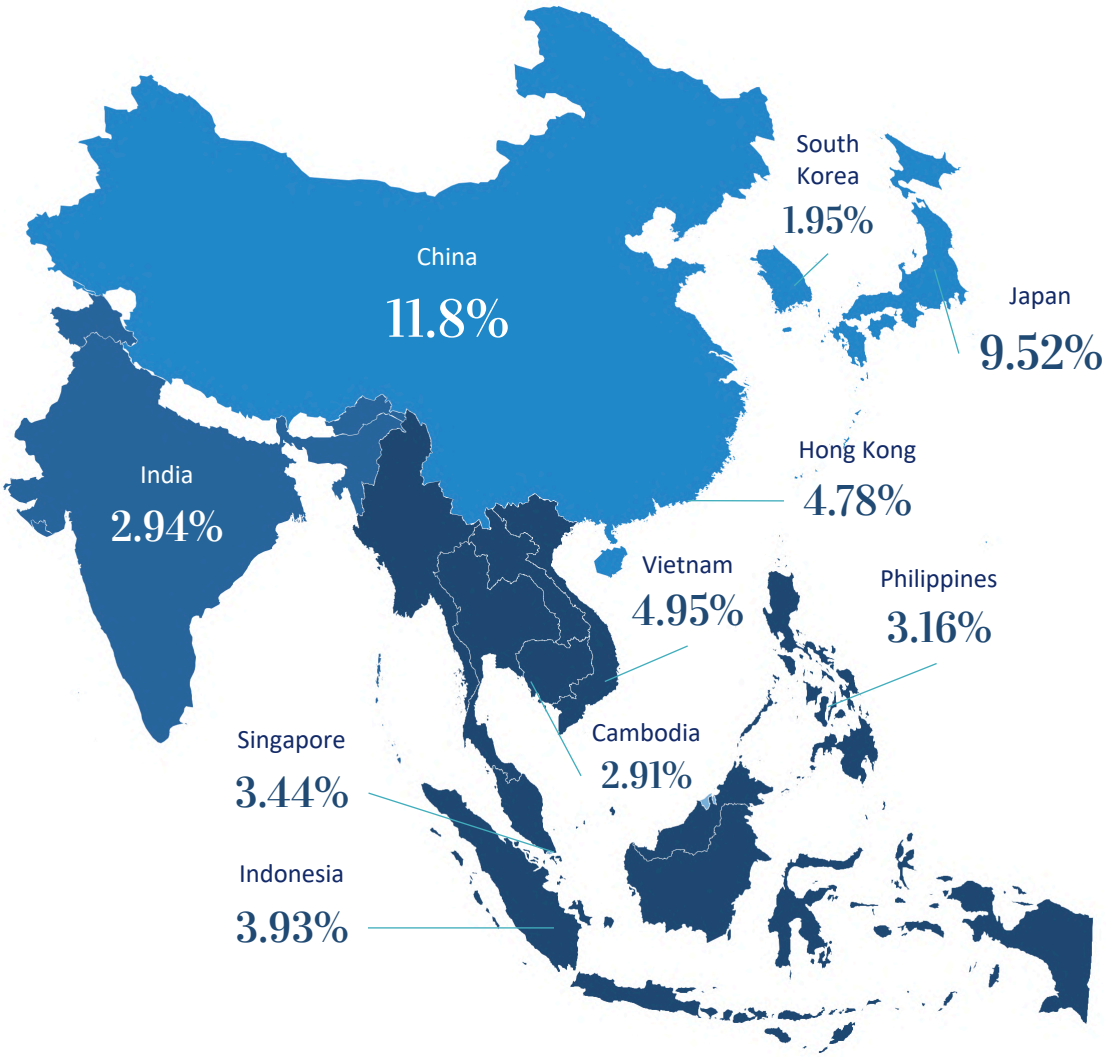


Figure 2: *Major destinations of Thailand's 2018 exports in Asia (USD 262B)*

Why Thailand is a good business destination

- Gateway to ASEAN and Southwest Pacific, strategically located in the heart of the Mekong region with close proximity to China and India.
- Government policy is favorable to investment and free trade, with laws that protect the interest of minority investors and generous incentives (BOI, EEC, IPA) offered.
- Second largest economy in Southeast Asia, participant in many bilateral FTAs in addition to the ASEAN Trade in Goods Agreement (ATIGA).
- Ease of doing business in Thailand is well documented in the World Bank Group's Doing Business 2020 ranking, due to the ease of company set up and clear legislation.
- Cost-effective, skilled, and diversified workforce.

2 Types of Business Structures

Types of Businesses in Thailand

Thailand recognizes private as well as public limited liability companies, partnerships, foreign businesses, branches and other forms of corporate entities.

Limited Companies

Thai limited companies are the most common type of business entity for Thai nationals and foreigners alike to incorporate in Thailand. The registration process for this type of company is streamlined and the types of activities it can engage in are broad.

A **private limited company** is governed by the Civil and Commercial Code. It requires at least three founders to incorporate, and is formed by registering two constitutive documents, a Memorandum of Association (Articles of Incorporation) and the Articles of Association (By-laws). A minimum of three shareholders is required at all times, and all shares must be subscribed to, with at least 25% of shares fully paid-up. Foreigners are permitted to own no more than 49% of a Thai limited company's capital shares—with the exception of companies under certain conditions, such as those granted a Foreign Business License, which permit 100% foreign ownership of a company.

Public limited companies are governed by the Public Limited Company Act. The incorporation process is similar to a private limited company, except that a public limited company requires a minimum of fifteen founders and five directors to be established, and it must have at least fifteen shareholders at all times. The rules and regulations concerning offering shares, debentures, and warrants to the public are administered by the Securities and Exchange Commission. Public limited companies may apply to list their securities on the Stock Exchange of Thailand. There are no restrictions on share transfers, except for those protecting the company's rights and interests as allowed by law and those maintaining the limit on foreign ownership.

Partnerships

Partnerships are categorized into two types: ordinary partnerships and limited partnerships.

In **ordinary partnerships**, the partners are jointly and severally liable for all obligations of the partnership. Ordinary partnerships may be registered or unregistered, and the two types are treated differently for tax purposes. Registered ordinary partnerships are taxed as corporate entities, separate and distinct from the individual partners, while unregistered ordinary partnerships, which are not juristic persons, are taxed as individuals.

Limited partnerships must be registered and taxed as corporate entities. They comprise two kinds of partners: at least one whose individual liability is limited to the amount of capital contributed to the partnership, and at least one who will be jointly and unlimitedly liable for all obligations of the partnership.

Other Forms of Corporate Entities

Foreign companies may also establish branch offices and representative offices to carry out certain business activities in Thailand. These types of business structures are established under the law of a foreign country and are considered to be the same legal entity as the parent company or head office.

Branch offices in Thailand may engage in trading activities and generate income. Although there is no explicit requirement for foreign corporations to register their branch office, the activities the branch office undertakes almost always fall under laws and regulations that require special registrations—such as VAT, taxpayer identification card, Foreign Business License, Commercial Registration Certificate, and so on—in order to conduct business. To be granted a Foreign Business License, the branch office's minimum paid-up capital must exceed 25% of the estimated average operating expenses per annum over a period of three years and be no less than THB 3 million.

As the branch office of a foreign corporation is considered to be an extension of the parent company, the parent company remains liable for civil, criminal and tax violations committed by the branch in Thailand. Income derived from a branch office's operations in Thailand is subject to corporate income tax at the standard 20% rate. Before opening a branch office, foreign corporations must consider what constitutes income subject to Thai tax, as the Revenue Department may impose tax on revenue directly earned by the foreign head office from sources within Thailand.

A **representative office** is extremely limited in its scope and may only engage in activities conducted on behalf of the head office that do not generate revenue. Subsequently, representative offices are not subject to taxation except for interest; however, they are still required to obtain a Corporate Tax Identification Number and submit income tax returns and financial statements to the Revenue Department and Department of Business Development. Its expenses, which are paid entirely by the head office, are treated as a subsidy.

The activities a representative office may engage in are as follows:

1. Reporting on business developments in Thailand to the head office;
2. Providing advice related to products that are being sold to distributors or customers;
3. Sourcing goods and services in Thailand;
4. Inspecting and controlling the quality and quantity of goods purchased or ordered to be manufactured in Thailand;
5. Disseminating information regarding new products or services.

If the representative office offers services outside of this scope, the Revenue Department will subject it to corporate income tax on all income it has received.

Foreign Direct Investment Incentives

Generally speaking, Thailand's investment promotion schemes privilege businesses whose activities include research and development, or which use high-technology in their operations. In 2015, Thailand's Board of Investment (BOI), a government agency whose express purpose is to promote direct investment in Thailand, drastically changed the country's investment promotion concept in order to emphasize innovation, environmentally-friendly activities, regional clusters of activities that strengthen value chains, and development in the south and in border regions. Subsequently, in addition to Industrial Estates, in 2015 Thailand launched the Special Economic Development Zones (SEZ) initiative in order to encourage the formation of specialized clusters in border regions.

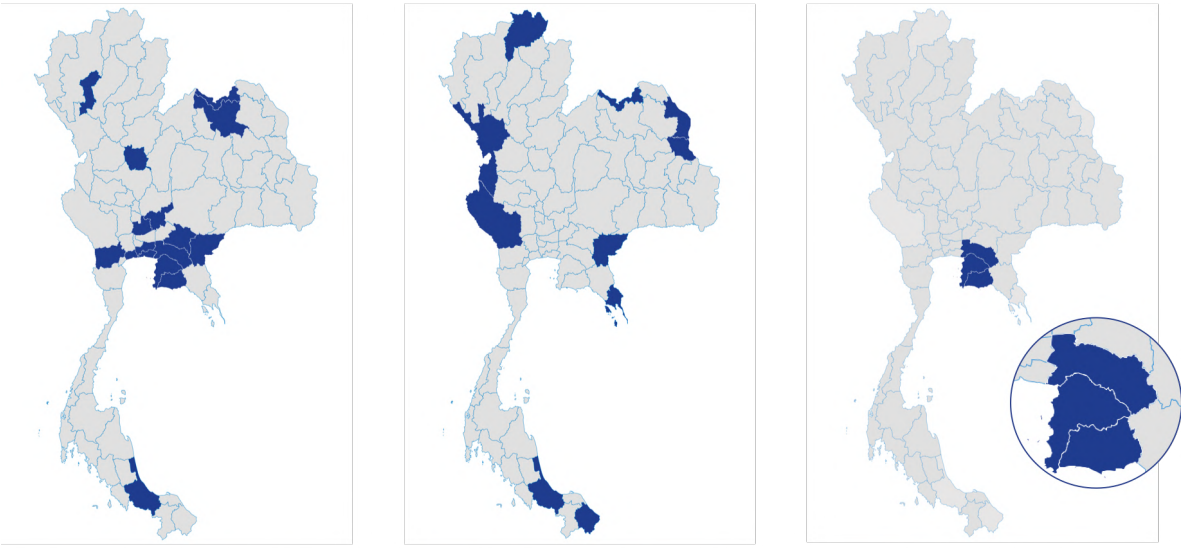


Figure 3: *Industrial Estates, SEZs and EEC in Thailand*[3]

Board of Investment (BOI) Thailand

The Board of Investment (BOI) Thailand is the principal government agency for encouraging investment in Thailand by offering incentives to eligible companies. The BOI aims at enhancing competitiveness and facilitating investments by offering attractive packages of tax incentives, easing foreign equity restrictions on manufacturing activities and services and waiving restrictions on land ownership by foreign entities.

[3] Source: Mahanakorn Partners Group research, 2020.

BOI Thailand promotes investments in specific activities and investment zones, granting both tax incentives and non-tax incentives, including:

1. Permission for foreign investors to own land;
2. Permission to operate under 100% foreign ownership;
3. Exemption from work permit and visa rules;
4. Exemption of import duty on machinery;
5. Corporate tax exemption for up to 8 years;
6. Deduction of transportation, electricity, and water costs;
7. Deduction of project's infrastructure installation;
8. Exemption of import duty on essential materials used in the manufacture of export products for 5 years;
9. Permission for foreign technicians, experts and their spouse or dependents to work and stay in Thailand.

The following are BOI Eligible Activities for promotion by business categories:

Figure 4: *Eligible Activities for BOI Promotion*[4]

Activities in the following eight business categories are eligible to be promoted by the BOI: Agriculture & Agricultural Products; Mining, Ceramics & Basic Metals; Light Industry; Metal Products, Machinery & Transport Equipment; Electronic Industry & Electric Appliances; Chemicals, Paper & Plastics; Services & Public Utilities; Technology & Innovation Development.

[4] Source: Announcement of the Board of Investment No. 2 /2557 and Announcement of the Board of Investment No. Sor. 1/2560. Last updated: March 23, 2020.

Since embarking on its "Seven-Year Investment Promotion Strategy" in 2015, the BOI offers two types of incentives—activity-based incentives and merit-based incentives. The former is granted to certain activities, knowledge-based or which use high-technology, which enhance Thailand's research and development capacities and overall competitiveness, such as biotechnology (Category 7.12) and electronic design (Category 5.6). The amount and type of tax incentives granted to a business will depend on how the BOI classifies their activities; for instance, businesses in Group A1 will receive the most generous tax incentives—an eight-year corporate income tax exemption with no cap and an exemption from import duty for machinery and raw materials—in addition to non-tax incentives.

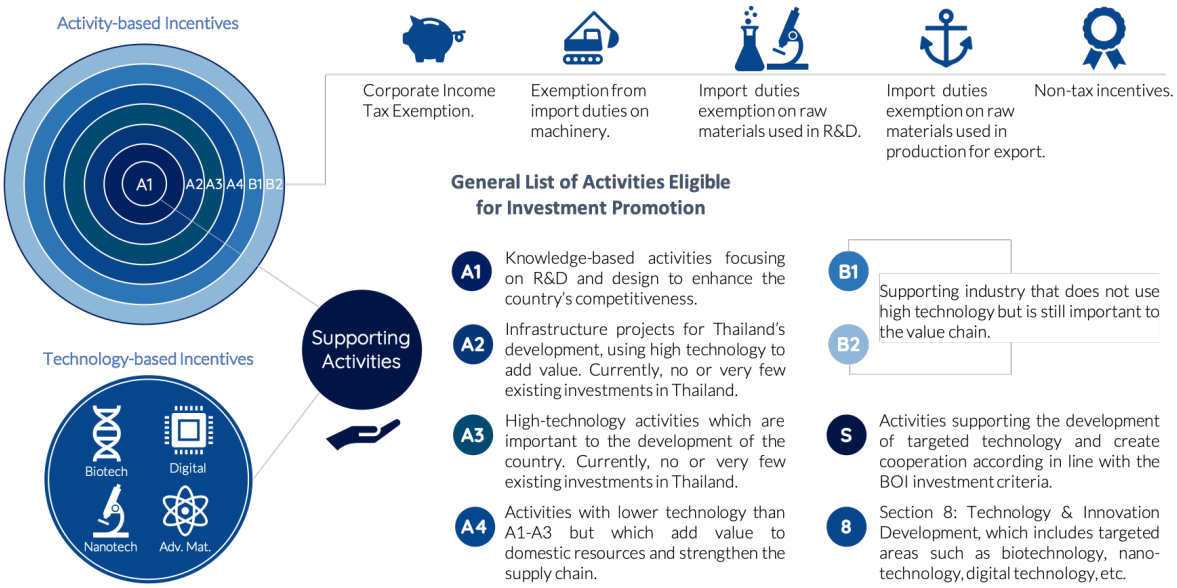


Figure 5: *Criteria for Granting Investment Incentives*[5]

Merit-based incentives are additional incentives granted to projects which augment Thailand's competitiveness, contribute to decentralization, or aid the development of industrial estates and promoted industrial zones. Like the activity-based incentives, the amount and type of the tax incentives granted depends on how the BOI categorizes the project's business activities and merits. A project conducting A1 business activities which receives merit-based incentives for competitiveness enhancement, for instance, is eligible to receive an additional corporate income tax exemption for up to three years with an additional cap of up to 300% of their qualified investments or expenditures.

[5] Source: Board of Investment Thailand, 2020.

Industrial Estate Authority of Thailand (IEAT)

Industrial estates are regulated by the Industrial Estate Authority of Thailand (IEAT). There are also industrial parks and industrial zones that are privately-owned and operated. Currently, there are 55 industrial estates in operation across 16 provinces, of which 13 are operated by I-EA-T and 42 are jointly operated with developers. Most businesses prefer to secure sites in industrial estates rather than build from scratch on empty land, because the former is equipped with the necessary infrastructure, utilities, and transportation links.

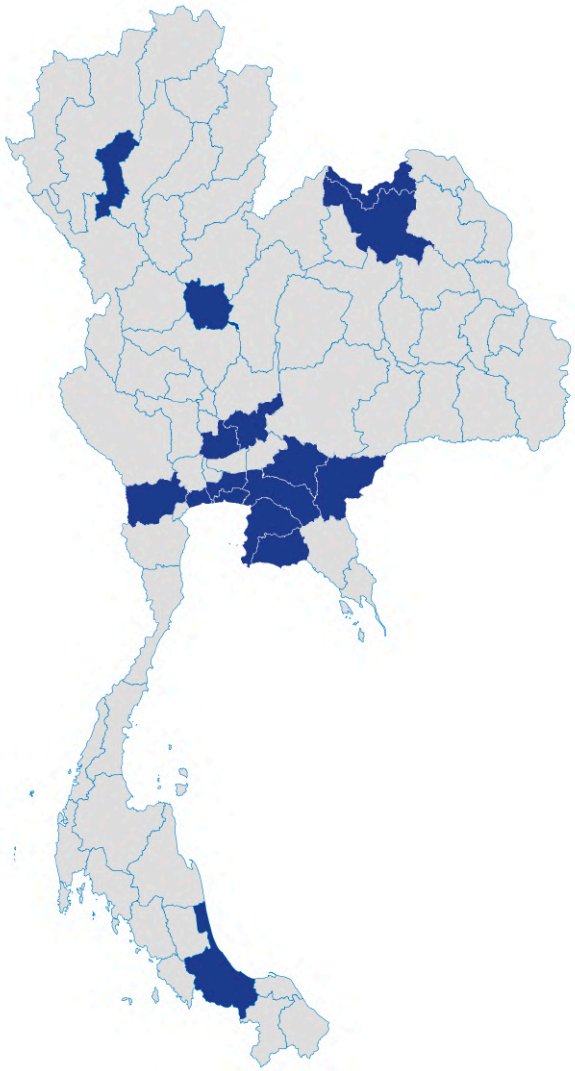


Figure 6: *Industrial Estates in Thailand*

Locating operations in industrial estates could also benefit companies financially in the form of government incentives such as tax relief or investment support.

Industrial estates also offer tax and non-tax privileges to industrial operators, depending on the type of zone the investment is located in. In a General Industrial Zone (GIZ), industrial operators have the right to own land in an industrial estate, visa and work permit facilitation for foreign skilled workers (and their spouses and dependents), the right to send money abroad, and the right to receive additional privileges from the BOI.

In addition to these non-tax privileges, industrial operators located in an Export Processing Zone (EPZ) may import duty-free raw materials and machinery into EPZs, and also receive tax privileges on products exported out of an EPZ for domestic use or consumption.

Special Economic Development Zones (SEZ)

The Special Economic Development Zones (SEZ) are located in 10 provinces around Thailand in border areas contiguous to Myanmar, at Kanchanaburi; the People's Republic of Laos, at Chiang Rai, Mukdahan Nhong Khai and Nakhon Phanom; Cambodia at Sa Kaeo, and Malaysia at Songkhla and Narathiwat. The Thai government offers both tax and non-tax incentives for businesses operating in target industries in these zones, allowing businesses to take advantage of growing border trade and investment.

The SEZs generally target the following thirteen industrial sectors, although not every SEZ promotes the same activities: (1) Agriculture, Forestry & Fisheries; (2) Ceramics; (3) Textiles, Clothing, Leather; (4) Furniture; (5) Jewelry; (6) Medical Equipment; (7) Automotive, Machinery & Spare Parts; (8) Electronics & Electrical Appliances; (9) Plastic; (10) Medicine; (11) Logistics; (12) Industrial Estate; (13) Tourism Support.

Through the BOI, businesses conducting targeted activities in SEZs will enjoy the following tax exemptions and deductions:

1. A corporate income tax exemption for a maximum period of 8-years followed by a 50% reduction of corporate income tax for a period of 5 years.
2. 10-year 200% deduction from the costs of transport, electricity, and water supply.
3. 25% deduction from the cost of installation or construction of facilities.
4. Exemption of import duties on machinery and raw materials for export production.

Additionally, as with general activities promoted by the BOI, investors in SEZ may own land, employ foreign unskilled labor, and bring in foreign experts.

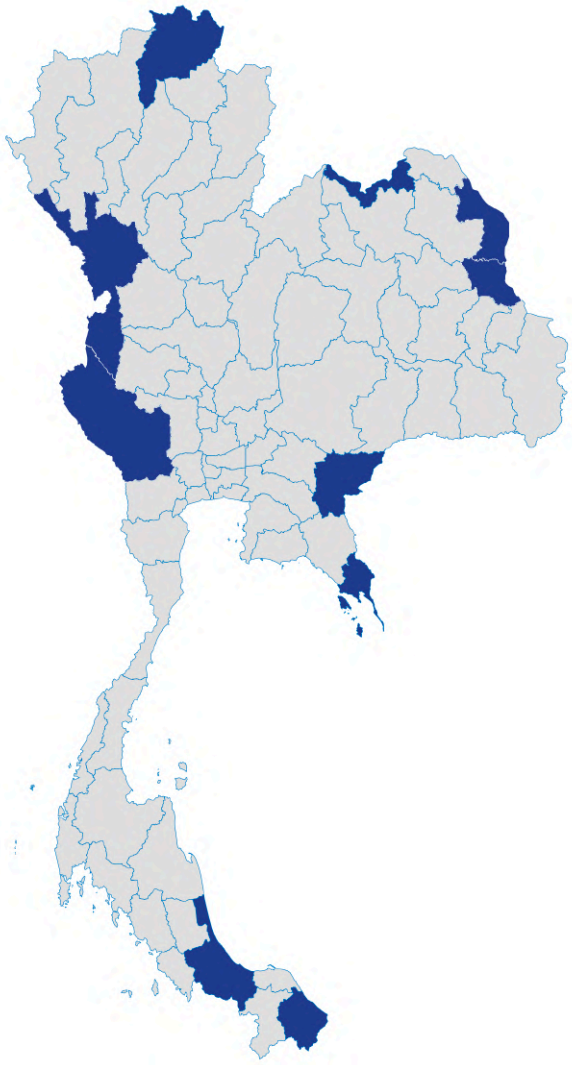


Figure 7: *Special Economic Zones in Thailand*

Eastern Economic Corridor (EEC)

The Eastern Economic Corridor (EEC) is an ASEAN-leading economic zone for industrial, infrastructure, and urban development across the three provinces of Chonburi, Rayong, and Chachoengsao. The initiative was launched in 2018 in order to promote investment in industries that use innovation and high technology. To be eligible for EEC promotions, the business must operate in one of the 10 targeted industries encompassing automotive, smart electronics, agriculture and biotechnology, food processing, and tourism, and next-generation industries such as automation and robotics, aviation and logistics, biofuel and biochemicals, digital, and medical and healthcare.

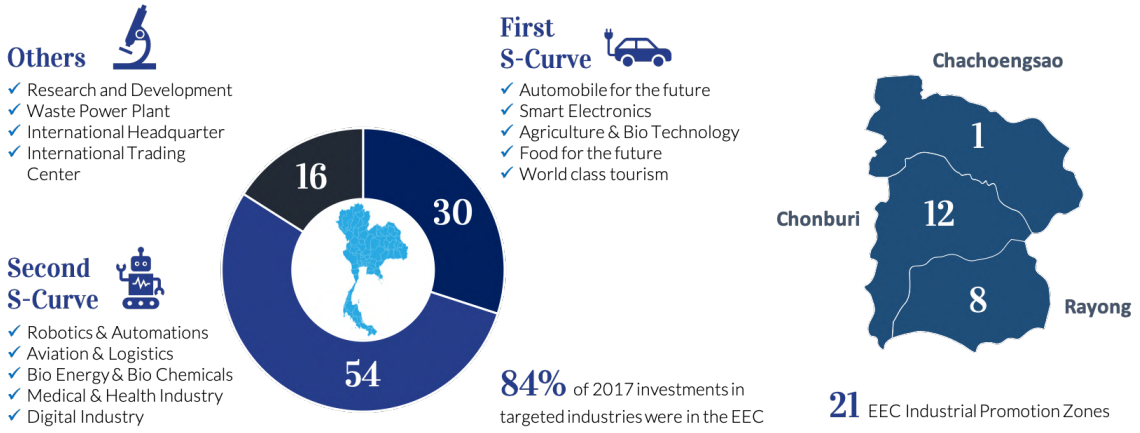


Figure 8: *EEC S-curve target industries*[6]

To further support innovation-led business, the EEC investment environment features generous tax and non-tax incentives as well as eased regulatory restrictions. The designated zones for targeted industries are the following:

1. Eastern Economic Corridor of Innovation (EECi): An innovation district that supports R&D projects, which bring together the public sector and academia;
2. Digital Park Thailand (EECd): A new economic cluster with a specific focus on digital innovation and investment;
3. Eastern Airport City (EECa): An airport-centered development area incorporating a redeveloped U-Tapao airport and other aviation facilities.

In addition to the aforementioned promoted zones for specific industries, designated zones also include 21 industrial estates designated by the EEC Policy Committee as promoted zones for targeted industries, and 19 other BOI-promoted industrial estates or zones in the three provinces.

[6] Source: Eastern Special Development Zone Act BE 2561 (2018).

EECi

Innovation

The Eastern Economic Corridor of Innovation or EECi is an innovation hub located at the heart of the Eastern Economic Corridor (EEC) in Wangchan District, Rayong Province. Its ultimate goal is to support the transformation of Thailand into a country that thrives on innovation and enhances the quality-of-life of its people on a sustainable and self sufficiency path.

EECd

Digital Park

The Digital Park, located in Sriracha, Chonburi , is an important ASEAN Economic Community (AEC) data hub with ultra high speed broadband infrastructure, including an international submarine cable station, a data center and a satellite earth station. Among the park's core developments are the U-Tapao Airport, the ports of Laem Chabang, Map Ta Phut and Sattahip, and the high-speed train project.

EECa

Aerotropolis

Strategically situated in the heart of Asia, Thailand hosts many key international aircraft manufacturing companies. The expansion of U-Tapao International Airport aims at turning the country into an aviation hub for Asia. The MRO facility also accommodates the production of aircraft parts and aircraft-related products, putting Thailand in a strong position to establish itself as a regional MRO base.

Figure 9: *EEC of Innovation (EECi), Digital Park Thailand (EECd), Eastern Airport City (EECa).*

All investors in EEC zones are entitled to exemption from corporate income tax for up to thirteen years, possibly paired with subsequent 50% reductions, although the length of time they are granted the tax privileges for will vary depending on the business activities and the zone the investment is located in.

EEC Zones	Incentives	For targeted industries in each EEC zone				For eligible activities in EEC	
		Section 8	A1	A2	A3	Section 8	A1-A3
EECi, EECd, EECa	CIT Exemption	10+3 Years (no cap)	8+4 Years (no cap)	8+4 Years	5+2 Years	10+1 Years (no cap)	5-8 Years (standard)
	50% CIT reduction	-	-	-	5 Years	-	3 Years
21 Industrial Estates designated by the EEC Policy Committee	CIT Exemption	10+2 Years (no cap)	8 Years (no cap)	8 Years	5 Years	10+1 Years (no cap)	5-8 Years (standard)
	50% CIT reduction	-	5 Years	5 Years	5 Years	-	3 Years
19 other BOI-promoted industrial estates and zones	CIT Exemption	10+1 Years (no cap)	8 Years (no cap)	8 Years	5 Years		
	50% CIT reduction	-	3 Years	3 Years	3 Years		

Table 1: *EEC tax privileges for qualified investors*

Notes:

A1: Knowledge-based activities focusing on R&D and design to enhance the country's competitiveness.

A2: Infrastructure activities for the country's development, activities using advanced technology to create value-added, with no or very few existing investments in Thailand.

A3: High technology activities which are important to the development of the country, with a few investments already existing in Thailand.

Section 8: Technology and Innovation Development includes targeted core technology development such as development of biotechnology, nano-technology, advanced materials technology and digital technology

International Business Center (IBC)

In the OECD's 2017 Progress Report on Preferential Regimes, Thailand's International Headquarters, Regional Headquarters, Treasury Centre and International Trade Centre regimes were all identified as Preferential Regimes featuring harmful tax practices. In response to this, the four regimes were suspended in October 2018, paving the way for the new International Business Centre (IBC) tax incentive regime. An IBC provides managerial, technical, supporting, financial management, or international trading services to affiliated foreign or Thai enterprises.

To be eligible for the IBC scheme, a company must meet the following requirements:

1. The company is incorporated under Thai law;
2. The company has a paid-capital of at least THB 10 million at the end of each accounting period;
3. The total operation expenses paid to Thai recipients must be at least THB 60 million per accounting period;
4. The company must hire at least 10 permanent employees.

Qualifying IBCs are entitled to a slew of tax benefits applied for through the Revenue Department, including:

1. A reduced corporate tax rate on qualifying income for a standard period of fifteen years;
2. Tax exemption on both domestic and foreign sourced dividend income derived from affiliates;
3. Withholding tax exemption on dividends paid to offshore shareholders and on interest payments to foreign beneficiaries in relation to loans for treasury activities;
4. Exemption from specific business tax on qualifying treasury center income;
5. Flat personal income tax rate of 15% for eligible expatriate employees.

IBCs promoted by the BOI are also entitled to receive non-tax incentives, such as:

1. Permission for 100% foreign ownership of the IBC;
2. Visa and work permit privileges for foreign nationals working for the IBC;
3. Permission to own land for use in the business of the IBC;
4. Machinery used for R&D or in training may receive an import duty exemption.

Regional Outlook for Public Procurement

For over three decades, the ASEAN region has thrived and pursued a path of economic development, becoming one of the world's most attractive regions for FDIs. In order to stimulate economic growth and improve connectivity, both Thailand and ASEAN have promoted the use of public private partnerships as a way to meet demand for quality infrastructure while circumventing the problems that plague conventional procurement; for instance, public infrastructure is capital-intensive and requires governments to bear the risks of life-cycle costs. PPPs offer governments the means to meet the funding gap and mitigate residual risk by leveraging off-balance sheet financing provided by the private sector, while simultaneously encouraging innovation in construction and design.

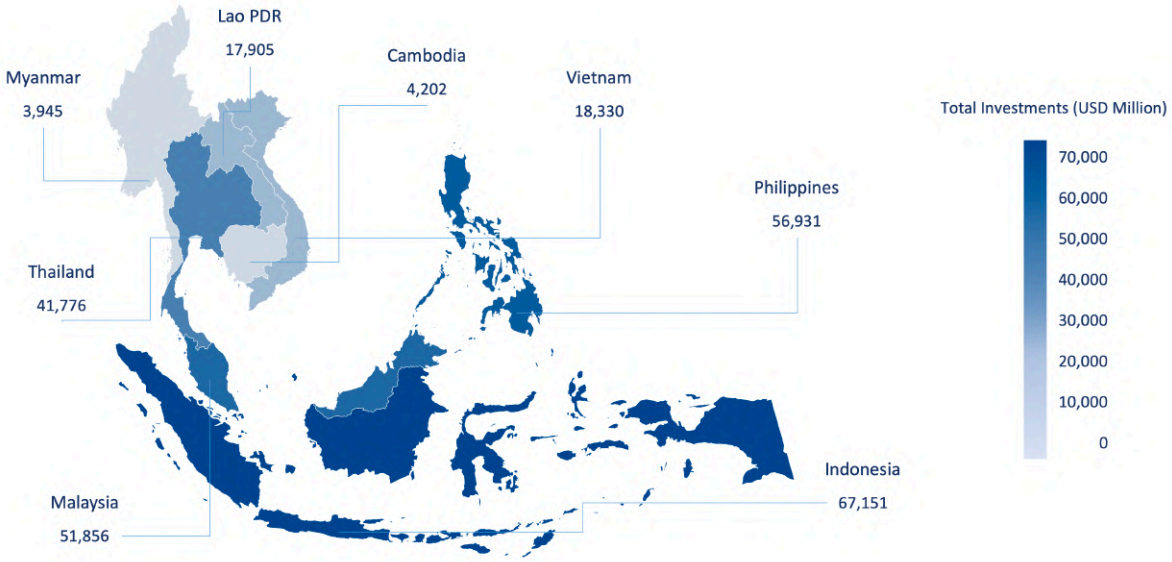


Figure 10: *ASEAN PPP Investments 1990-2018*[7]

Private Participation in Infrastructure in ASEAN

Opportunities for PPI in ASEAN have grown rapidly over the past few decades. The number of PPP projects in developing Asia has risen by a compounded annual growth rate of 11% and, in aggregate, the number of PPPs in developing Asia accounts for half of all PPPs in the World's emerging and developing economies[8]. PPPs have gained considerable ground in Southeast Asia, predominantly in the larger economies of Indonesia, Malaysia, the Philippines, Thailand and Vietnam. In the period 1990-2018, PPPs in ASEAN exceeded $261 billion, distributed as follows: 1.60% in Cambodia, 25.62% in Indonesia, 6.83% in Lao PDR, 19.79% in Malaysia, 1.51% in Myanmar, 21.72% in the Philippines, 15.94% in Thailand and 6.99% in Vietnam[9].

[7] Source: Mahanakorn Partners Group elaboration on World Bank data, 2019.
[8] Source: Asian Development Bank (ADB), 2019.
[9] Source: The World Bank Group, data extracted and elaborated in May 2019.

Thailand Public-Private Partnership Act

The Public-Private Partnership Act B.E. 2562 (2019) (PPP Act) came into force on March 11, 2019, governing PPP projects exceeding a value of THB 5 billion, as outlined in Section 8 of the Act, and certain projects that meet prescribed criteria that are valued at less than THB 5 billion.

Roads, highways, special ways and land-transportation	Telecommunications and general communications
Trains, electric trains and other rail-transportation	Hospitals and public health
Airports and air-transportation	Schools and education
Ports and water-transportation	Housing for low or medium wage earners, the elderly, under-privileged or disabled
Water management, irrigation, waterworks and wastewater treatment	Exhibition centers and conference centers
Energy works	Other projects as to be announced by Royal Decree.

Figure 11: *Thailand's 12 categories of infrastructure projects and public services*[10]

Preparation and Implementation of a Project

Chapter 4, Part 1 of the PPP Act governs the submission of a **Project Proposal** to the relevant contracting authority. While formulating a Joint Investment Project (JIP), the project owner must prepare a feasibility study and project analysis report that include all of the details required by Thailand's Public-Private Partnership Policy Committee. To this end, the project owner must engage a consultant to jointly prepare the report. Subsequently, the JIP proposal is submitted, together with the feasibility study and analysis report, to the responsible ministry or government agency as well as the Committee, for consideration and approval. Once approved, the responsible government entity will submit the JIP proposal to the Cabinet for approval.

The selection of the Private Party is made by **competitive bidding**, unless the Cabinet has approved other selection methods, which are outlined in Section 25 and Section 34. An unsolicited proposal can be accepted if both the following conditions occur: *(1)* the feasibility study and project analysis demonstrate that competitive bidding is not a suitable method for selection of the Private Partner (Section 25) and *(2)* both the project owner and the Committee agree on not utilizing competitive bidding (Section 34).

[10] Source: Thailand Public-Private Partnership Act B.E. 2562 (2019), Section 7.

Public-Private Partnership Promotion Fund

A Public-Private Partnership Promotion Fund under the Ministry of Finance was established to support public investment in state undertakings[11]. The purpose of the Fund is to cover retainer fees of consultants. Where the project owner does not have a budget provision specifically reserved to retain consultants, it can submit a fund appropriation request with the PPP Promotion Fund.

Project Finance

Project finance transactions are non-recourse or limited recourse lines of credit, whereby lenders rely on the future cash-flows of the projects to be built for debt servicing. Generally, legal and financial consultants would prepare the due diligence documents that the mandated lead arranger would review to assess a project's long-term financial viability. The consultant would also prepare an informative memorandum containing the project's financial model, which includes information such as the Debt-Service Coverage Ratio (DSCR). Project financing mostly relies on debt, and partially on equity and mezzanine finance.

Models		Infrastructure Finance Instruments		Market Vehicles	
Asset Category	**Instrument**	**Infrastructure Project**	**Corporate Balance Sheet / Other Entities**	**Capital Pool**	
Fixed Income	Bonds	Project Bonds	Corporate Bonds, Green Bonds	Bond Indices, Bond Funds, ETFs	Decreasing Cost
		Municipal, Sub-sovereign bonds			
		Green Bonds, Sukuk	Subordinated Bonds		60%-90% of Capitalization
	Loans	Direct/Co-Investment lending to Infrastructure project, Syndicated Project Loans	Direct/Co-investment lending to infrastructure corporate	Debt Funds (GPs)	
			Syndicated Loans, Securitized Loans (ABS), CLOs	Loan Indices, Loan Funds	
Mixed	Hybrid	Subordinated Loans/Bonds, Mezzanine Finance	Subordinated Bonds, Convertible Bonds, Preferred Stock	Mezzanine Debt Funds (GPs), Hybrid Debt Funds	0%-20% of Capitalization
Equity	Listed	YieldCos	Listed infrastructure & utilities stocks, Close-end Funds, REITs, IITs, MLPs	Listed Infrastructure Equity Funds, Indices, trusts, ETFs	10%-30% of Capitalization
	Unlisted	Direct/Co-Investment in infrastructure project equity, PPP	Direct/Co-Investment in infrastructure corporate equity	Unlisted Infrastructure Funds	

Increasing Risk

Table 2: *Sources of financing for PPP projects*[12]

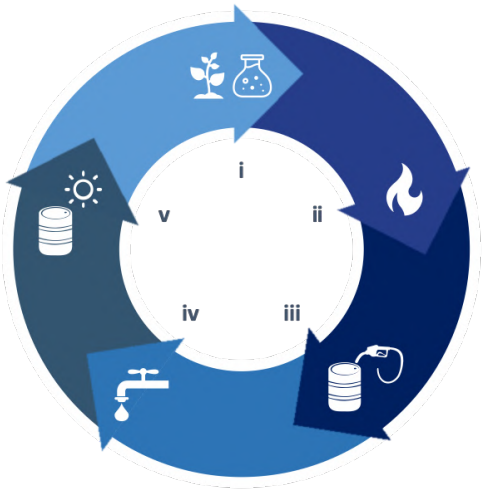
Equity represents financial resources provided by the project sponsors, which are normally injected into a Special Purpose Vehicle (SPV) in return for an ownership interest. Equity ranges between 10%-30% of the total project capitalization. Hybrid sources of financing—such as mezzanine finance, subordinated loans, convertible bonds and preferred stock—are characterized by an equity-like feature, bridging between equity and debt and ranging between 0%-20% of capitalization. Debt accounts for the largest portion of infrastructure finance, ranging between 60%-90%, and it is provided by a multitude of instruments.

[11] Source: Thailand Public-Private Partnership Act B.E. 2562 (2019), Chapter 6, Sections 51 & 54.
[12] Source: OECD, Infrastructure Financing Instruments and Incentives, 2015.

Renewable Energy and Project Procurement

In recent years, Thailand has rolled out a number of promotion schemes for renewable energy producers, making investment in renewables a viable and attractive option for both Thai and foreign investors. One recent policy development, the Community Power Plant Project Procurement Regulations, encourages small-scale, privately-owned renewable energy producers to enter the power generation market, and offers incentives to do so.

The Community Power Plant Project Procurement Regulations, issued by the Energy Regulatory Commission (ERC), went into effect on April 11, 2020. The new regulations outline eligibility criteria, the application process, and how to ensure compliance with the terms of Power Purchase Agreements (PPAs) for Very Small Power Producers (VSPPs). As part of the Electricity Generating Authority of Thailand's (EGAT) Energy Policy for the Local Economy, the new regulations promote the use of renewable energy sources and incentivize partnerships between power companies and local communities. Subsequently, power plants established under this plan must directly involve the local community as a stakeholder and financial beneficiary in their development, construction, and power-distribution activities.



What is a VSPP?

A Very Small Power Producer (VSPP) is a small-scale, privately-owned power plant that generates no more than 10 MW per project. VSPPs sell electricity directly to state utilities—the Metropolitan Electricity Authority (MEA) and/or Provincial Electricity Authority (PEA)—and may only use the following fuel categories for energy generation:

i. Biomass
ii. Biogas from wastewater or waste
iii. Biogas from biofuel
iv. A hybrid of biomass with biogas (wastewater or waste)
v. A hybrid of biogas (biofuel) with solar power.

Figure 12: *Very Small Power Producers (VSPP) in Thailand*[13]

The VSPP scheme aims to promote domestic waste-to-power generation in Thailand and benefit local communities by encouraging farmers to sell crops to power producers. With these goals in mind, the new regulations explicitly prohibit VSPPs from purchasing or distributing energy from fuel categories that are not listed above. Violations will result in the termination of the VSPP's Power Purchase Agreement (PPA) and incur a heavy fine—5,000 baht per kilowatt according to the amount of power specified in the contract.

[13] Source: Regulations of the Energy Regulatory Commission on power procurement from very small power producers for the Community Power Plant Project for the Local Economy, 2020.

Who is eligible to apply?

To be eligible for the VSPP scheme, prospective applicants must comply with requirements established by various policies and state authorities, including:

i. The requirements and regulations set by the Executive Committee of Power Purchase from Community Power Plant Projects.
ii. The qualifications for obtaining an energy industry license under the Energy Industry Act, B.E. 2550 (2007).
iii. Regulations and announcements related to environmental impact set by the Energy Regulatory Commission.

The application process

After determining their eligibility, prospective VSPPs should submit a proposal for selling power to either the Metropolitan Electricity Authority (MEA) or the Provincial Electricity Authority (PEA). Applicants will need to prepare several documents proving their VSPP's viability and regulatory compliance. These include a business plan illustrating the company's structure and logistical schemes, details about its power-generation technology, financial plans, and supporting documents that certify the company's incorporation in Thailand. At every step of the process, the applicant will need to consider the welfare of the local community and the environmental impact of their plans.

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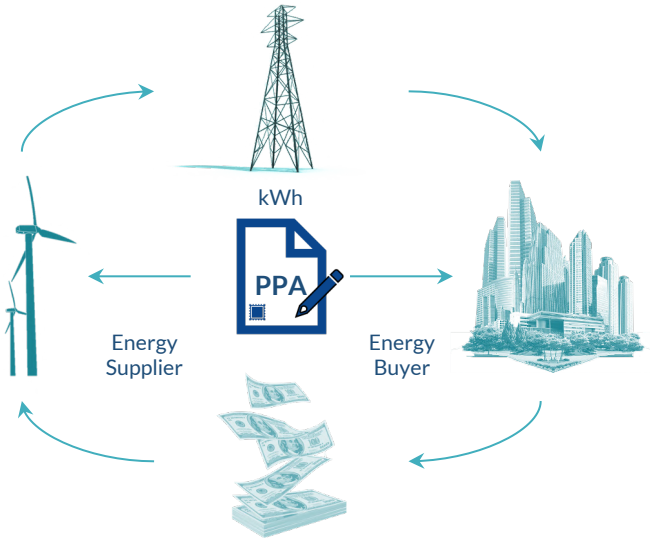


At every step of the process, the applicant will need to consider the welfare of the local community and the environmental impact of their plans. When they are ready to submit their application, applicants will post a demand guarantee—specifically, a bid bond in the amount of THB 500 per kilowatt (kW) of electricity offered for sale—to the MEA or the PEA. The bid bond will be returned if the applicant withdraws or loses its bid to sell power, or when the applicant signs the PPA. Additionally, prior to signing the PPA, successful applicants must post a performance bond of THB 500 per kW of electricity offered for sale, as a guarantee that the applicant will fulfill their contractual obligations. This amount will be returned on the Commercial Operation Date (COD).

After reviewing applications, the Executive Committee will announce a list of successful applicants through the ERC and the PEA or MEA. These approved project proponents are eligible to sign the PPA and must do so within 120 days after the announcement. If the applicant fails to sign the PPA within the given timeframe, the PPA will be void and the applicant's bid bond is forfeited, except in cases where a failure to sign is due to the fault of the government agency or a force majeure event.

Power-purchase and promotions

The government offers several investment promotion incentives to VSPPs. In order to mitigate the risks involved with renewable energy investment, the Feed-in Tariff policy mechanism guarantees long-term, fixed-price tariffs for power purchased from VSPPs. PPAs with VSPPs have a term of 20 years from the COD and offer preferential power purchase rates at a fixed price per unit of electricity, which vary depending on the category of fuel.

Production capacity (MW)	FiT (Baht/unit)			Support duration	FiT Premium (Baht/unit)
	FiTF	FiTV,2020	FiT (1)		Special areas (2)
1) Solar Energy					
Installation capacity of all sizes	2.90	-	2.90	20 years	0.50
2) Biomass					
Installation capacity ≤ 3 MW	2.61	2.2382	4.8482	20 years	0.50
Installation capacity > 3 MW	2.39	1.8736	4.2636	20 years	0.50
3) Biogas from water waste or waste					
Installation capacity of all sizes	3.76	-	3.76	20 years	0.50
4) Biogas from energy crops					
Installation capacity of all sizes					
In the case of 100% energy crops	2.79	2.5825	5.3725	20 years	0.50
In case of mixing with waste ≤ 25%	2.79	1.9369	4.7269	20 years	0.50

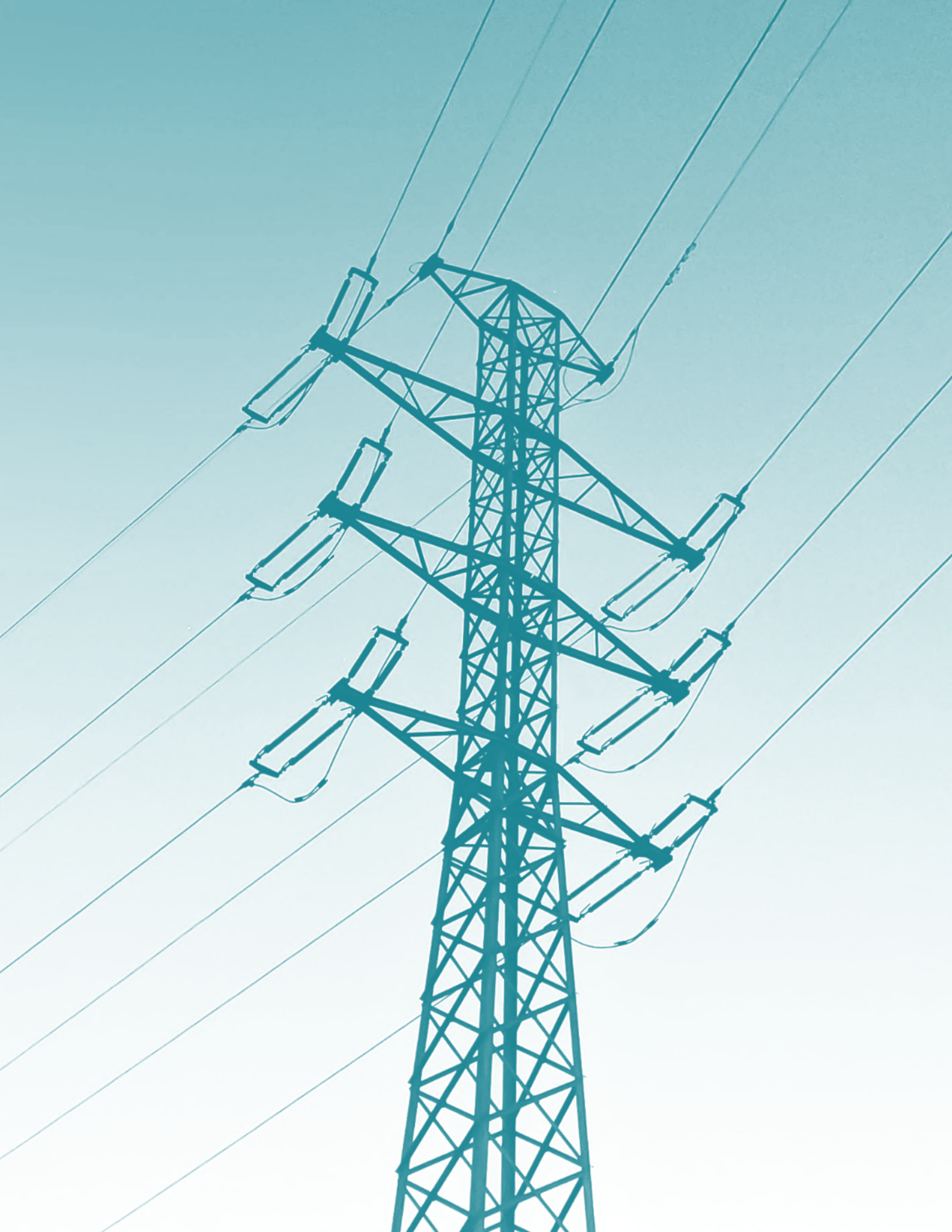
Table 3: *Feed-in Tariffs*[14]

Notes

(1) FiT rates will be used for Community Power Plant Projects for the Local Economy, which supplies power into the system within the year 2019. After which, the FiTV rate will continue to increase according to the core inflation announced by the ERC.

(1) The Community Power Plant Projects for the Local Economy in the provinces of Yala, Pattani, Narathiwat, and for the four districts in Songkhla, which are Chana, Thepha, Saba Yoi and Nathawi District.

[14] Source: Regulations of the Energy Regulatory Commission on power procurement from very small power producers for the Community Power Plant Project for the Local Economy, 2020.



Tax Compliance

Corporate Income Tax

The Corporate Income Tax (CIT) rate in Thailand is 20%. Notwithstanding this general rule, SMEs whose paid-up capital is less than 5 million baht, and whose annual net profits do not exceed 3 million baht, are subject to a 15% CIT. CIT is levied on both Thai and foreign companies, although a Thai resident company is taxed on its worldwide income, while a foreign company conducting business in Thailand, or its branch, is only taxed on the income generated in Thailand. Annual Corporate Tax returns (Annual Audit, form PND 50) must be filed within 150 days of the closing date of the accounting period (balance sheet date). The CIT return involves the preparation and filing of Summary Financial Report form (SBC 3), Summary of Annual Salary (form PND 1 Kor), Workmen's Compensation, and Corporate Income Tax Returns (form PND 50) to the Revenue Department, Social Fund Office, and Department of Business Development.

Withholding Tax

Certain types of revenue are subject to Withholding Tax (WHT) at source. WHT rates depend on the types of income and the tax status of the recipient. Companies are required to file the return (form PND 53) and submit the amount of tax withheld to the District Revenue Offices within the 7th day of the following month in which the payment is made. The tax withheld will be credited against final tax liability of the taxpayer. The following are the WHT rates on some important types of income[15]:

Types of income	Withholding tax rate
Dividends	10 %
Interest[1]	1 %
Royalties[2]	3%
Advertising Fees	2%
Services and professional fees	3 % if paid to Thai company or foreign company having permanent branch in Thailand; 5% if paid to foreign company not having permanent branch in Thailand
Prizes	5%

Notes

(1) Tax will be withheld on interest paid to associations or foundations at the rate of 10%.
(2) Royalties paid to associations or foundations are subject to 10% withholding tax rate.
(3) Government agencies are required to withhold tax at the rate of 1% on all types of income paid to companies.

[15] Source: The Revenue Department of Thailand, 2020.

Value Added Tax (VAT)

The statutory standard rate of VAT is 10%, but successive Royal Decrees have reduced the rate to 7%. On August 25th, 2020, the cabinet passed a draft bill to extend the current reduced rate of 7% VAT for another year. Once the draft bill is enacted, the reduced rate will take effect from October 1st, 2020 until September 30, 2021, unless further extended by the government.

VAT is levied on the sale and provision of goods and services in Thailand, and the import of goods and services into Thailand. The export of goods and services rendered in Thailand but wholly consumed overseas is VAT exempt, as are select goods and services within Thailand, including the sale or lease of immovable property, medical services, educational services, interest, and health care services. Businesses with an annual turnover less than THB 1.8 million are also exempt from VAT, although it is recommended that businesses are VAT-registered regardless. To register for VAT, businesses must submit the form Phor.Por.01 to the Revenue Department before commencing operations, or within thirty days of exceeding the THB 1.8 million annual income limit. VAT return (form VAT 30) together with tax payment, if any, must be submitted to the Area Revenue Branch Office within the 15th day of the following month.

Year-End Audit

The Annual Corporate Tax return (Annual Audit, PND 50) must be filed within 150 days of the closing date of the accounting period (balance sheet date). It involves the preparation and filing of Summary Financial Report form (SBC 3), Summary of Annual Salary (PND 1 Kor), Workmen's Compensation, and Corporate Income Tax Returns (PND 50) to the Revenue Department, Social Fund Office, and Department of Business Development.

Half-Year Audit

The Half-Year Corporate Earnings Assessment (PND 51) report must be filed within sixty days of the end of the half year period. The taxable income is calculated as one-half of the estimated profit for the full year.

Annual Withholding Tax Returns for Wages to Employees

The form (PND 1 Kor) summarizes the details of employment, namely wage payments and tax withholdings for the entire year. The form must be submitted to the Revenue Department within February of the following year.

Cash Management (Escrow Account)

The form "Kor Tor 26 Kor" is used by the Social Security Office to estimate Workmen's Compensation Fund contributions for the following year. Social security officials estimate the amount due based on previous years' salaries and the payment is due by the end January. The form "Kor Tor 20 Kor" is used to compare the figures estimated on the previous Kor 26 form with the actual figures, to determine the amount of any underpayment or overpayment and any outstanding amount to be paid or refunded.

Personal Income Tax

Taxpayers are liable to file Personal Income Tax return and make a payment to the Revenue Department by the last day of March following the relevant fiscal year. The personal income tax system is progressive. Any withholding tax which has been paid to the Revenue Department can be used as a credit against the tax liability at the end of the year.

Both residents and non-residents need to apply for a personal income tax ID. Residents must pay taxes on all income resulting from:

1. Income realized in Thailand, in cash or in kind (paid in or outside Thailand).
2. Income from a foreign source that is brought into Thailand within the year.

Non-residents are subject to personal income tax on income generated in Thailand.

The assessable income is classified into eight categories:

1. Income from wages and salary, including the benefits provided by an employer (e.g. income from stock options, personal income tax paid and absorbed by the employer, living allowances, monetary value of rent-free accommodation, etc.), but excluding business travel expenses and medical treatment.
2. Income from employment or services rendered.
3. Income from royalties (goodwill, copyright, franchise, patents or other rights)
4. Income from dividends, interest (e.g. on deposits with banks in Thailand), capital gain, bonuses for investors, acquisition or dissolution of companies or partnerships, etc. However, this does not include the share of profits obtained from a non-juristic body of persons or from the sale of investment units in a mutual fund.
5. Income resulting from leasing out a property.
6. Income resulting from professional services (e.g. law, medicine, engineering, accounting, architecture and fine arts).
7. Income resulting from construction and other related contractual arrangements, whereby the contractor provides essential materials.
8. Income from business, commerce, agriculture, industry, transport or any other activity not-specified here above (carry-all clause). Insurance benefits, inheritances and scholarships, however, are not considered as assessable income and are thus not subject to personal income tax.

Taxable Income	Tax Rate
0 – 150,000 THB (189,999 THB if the taxpayer is older than 65 years)	Exempted
150,001 – 300,000 THB	5%
300,001 – 500,000 THB	10%
500,001 – 750,000 THB	15%
750,001 – 1,000,000 THB	20%
1,000,001 – 2,000,000 THB	25%
2,000,001 – 4,000,000 THB	30%
4,000,001+ THB	35%

Table 4: *Thai personal income tax rates*

Specific Business Tax (SBT)

Specific Business Tax (SBT) is an indirect tax levied on certain businesses that are not subject to VAT. These specific types of businesses are the following:

1. Banking under the law governing commercial banking or any other specific law;
2. Finance, securities and *credit foncier*;
3. Life insurance;
4. Pawn broking;
5. Businesses similar to commercial banks, such as provision of loans, provision of guarantees, exchange of currencies, issuance, purchase or sale of bills or transfer of money abroad by different means;
6. Sale of immovable properties;
7. Sale of securities in compliance with the Securities and Exchange Act;
8. Any other business as prescribed by a relevant Royal Decree.

The SBT taxable period is a calendar month and tax returns must be filed (form Por. Tor. 40) on a monthly basis, regardless of whether a business has any income. SBT return and payment must be submitted to the District Revenue Office within the 15th day of the following month of each SBT taxable period. If a taxpayer has more than one place of business, each place of business must file its return independently and pay SBT separately, unless otherwise approved by the Director-General of the Revenue Department.

The SBT rate depends upon the type of business and tax base as follows:

Types of income	Tax base	Tax rate
Banking, finance and similar business	Interest, discounts, service fees, other fees, profits from foreign exchange	3%
Business of finance, securities and *credit foncier*	Interest, discounts, service fees, other fees, profits from foreign exchange	3%
Life insurance	Interest, service fees and other fees	2.5%
Pawn brokerage	Interest, fees, remuneration from selling overdue property	2.5%
Transactions like commercial banks'	Interest, discounts, service fees, other fees, profits from foreign exchange	3%
Sale of real estate	Gross receipts	0.1%
Sale of securities	Gross receipts	0.1% (exempted)

Table 5: *Specific Business Tax (SBT) rates*

Note: A local tax calculated as 10% of the levied SBT is also imposed. For instance, profits deriving from foreign exchange transactions are subject to a total 3.3% tax, of which SBT is taxed at the rate of 3% and local tax at the rate of 0.3%.

Stamp Duty

Stamp duties are taxes levied on instruments rather than transactions or persons. Chapter VI of Title II of the Revenue Code lists all the instruments that are subject to stamp duty. The persons liable to pay stamp duty are those executing the instrument, the holders of the instrument or the beneficiary. This tax must be paid on most documents filed with Government agencies, such as transfers of land title deeds, leases of immovable properties, stock transfers, debentures, mortgages, life assurance policies, annuities, powers of attorney, promissory notes, letters of credit, and cheques, to name a few. Stamp duties range between THB 1-200.

Capital Gains Tax (CGT)

Types of Income	Tax Rate
Capital Gains	
•Individual Investor •Juristic Investor	•Tax exempt •No withholding tax but must pay Corporate Income Tax.
Dividends	
•Individual Investor	•10% withholding tax on any dividend income from listed or limited companies. •10% withholding tax on any mutual fund dividend income; or include such income in year-end taxes. •Dividends from any company promoted by the Board of Investment are tax exempt.
•Juristic Investor	•10% withholding tax if the taxpayer is not a listed company. •Tax exempt if the taxpayer is a listed company and has held the related shares or investment units for three or more months before and after the date of dividend payment. •Tax exempt if: (a) the taxpayer is a juristic entity holding 25% or more of the votable shares of the firm issuing dividends; and (b) the issuing company does not hold any shares issued by the taxpayer. However, the taxpayer must have held the related shares or investment units for three or more months before and after the date of dividend payment. •Dividends from any company promoted by the Board of Investment are tax exempt.
Interest Income:	
•Individual Investor	•15% withholding tax.
•Juristic Investor	•1% withholding tax. •No withholding tax on interest paid by a commercial bank to a finance company, securities company, *credit foncier* company, or other commercial bank.

Table 6: *Thai capital gains tax rates*


FIG.8
10 11 12 1 2 3 4 5 6 7 8 9 10 11 12
129
348
698
1,000
1,500
2,000
458
369
675
984
368
458
1,254
265
584
Q4
10,000
91.2
71.2
62.4
57.8

7 Employment

Work Permits

Foreigners must obtain a valid work permit in order to legally work in Thailand. Work permits state foreign workers' current occupation, job description and the companies they are employed by. Foreigners are not entitled to work or conduct business in Thailand—regardless of their type of visa—unless they obtain a work permit. Those who wish to work, conduct business or undertake investment activities in Thailand must also apply for a Non-Immigrant Visa at the Royal Thai Embassies or Royal Thai Consulates-General, which must be obtained before entering Thailand. Subsequently, the application to a work permit may be submitted to the Ministry of Labor and the process may take about seven business days.

Social Security Fund Contributions

In compliance with Section 39 of the Social Security Act, employers and employees must make statutory monthly contributions to the Social Security Fund (SSF). The monthly SSF contribution rates are as follows:

- ✓ Employers contribute 5% of wages with a cap of THB 750.
- ✓ Employees (under Section 33) contribute 5% of wages with a cap of THB 750.
- ✓ Voluntarily insured persons registered under Section 39 contribute THB 432 per month.

Severance Pay

Severance pay is an amount of money an employer owes to an employee in lieu of notice, in exchange for the employee's agreement to sever an employment contract forthwith.

An employer must give an employee reasonable notice of termination unless, of course, it is with just cause, in which event no notice may be required. Severance pay compensates employees for past contributions to the business, proportionally to the length of service.

Length of Employment	Severance Pay Amount
120 days < 1 year	30 Days Worth
1 year < 3 years	90 Days Worth
3 years < 6 years	180 Days Worth
6 years < 10 years	240 Days Worth
10 years < 20 years	300 Days Worth
≥ 20 years	400 Days Worth

Table 7: *Severance pay rates in Thailand*[16]

Business Leave

An employee is entitled to at least 3 working days of business leave per year, and the employer must pay a maximum of 3 working days.

[16] Source: Amendments to the Thailand Labour Protection Act B.E. 2541, 2019.

Maternity Leave

The statutory maternity leave in Thailand is 98 days per pregnancy, with up to 45 days wages during the leave.

Temporary Suspension of Business

The 2018 amendment of the Labour Protection Act clarifies that an employer is required to pay wages during temporary suspension of business operations at least once a month at the employee's workplace or other places consented to by the employee.

Interest on Statutory Payments

Where an employer defaults on payments owed to employees, the employee is entitled to receive interest at the rate of 15% per year.

Employee Benefits

The several amendments to the Thai Financial Reporting Standards (TFRSs) for Non-publicly Accountable Entities (NPAEs), promulgated between 2019 and 2020, require employers to recognize an employee benefit liability for the Severance Pay obligation using the 'best estimate' method. The Federation of Accounting Professions has provided NPAEs with guidelines on the recognition of this liability, striving to keep the computation of the liability simple.

In the event a company has not yet recognized a provision for severance payments before the issuance of TFRS for NPAE (accounting periods on or after 1 January 2011), then it should do so using one of the following four methods:

- ✓ Recognizing the full amount in Current Expenses;
- ✓ Amortizing the obligation using a Straight Line Method;
- ✓ Adjusting through the Retained Earnings on 1 January 2011; or
- ✓ Making a Retroactive Adjustment.

In the event a company has already recognized a provision for severance payments, then it is required to assess whether there is any under- or overstatement and adjust the current year's profit and loss accordingly.

Simple Computation Method

The Federation of Accounting Professions' guidelines indicate a simple computation method for severance pay, which does not factor in:

- ✓ Salary increases;
- ✓ New employees hired as a replacement; or
- ✓ Death.

8 Conclusions

Thailand's draw on foreign capital should be unsurprising. The country's cost-effective and skilled labor force, export-oriented economy, and strategic regional location have made it an ideal hub for logistics, manufacturing, and trade, while its fast-growing service sector looks to set a course for future growth. Thailand's regional competitiveness is further enhanced by its favorable relations with both China and the U.S., strong cross-border finance, infrastructure, and participation in many bilateral free trade agreements, including the ASEAN Trade in Goods Agreement (ATIGA). Although Thailand still has a way to go on optimizing its regulatory environment, in recent years the country has pursued a path of regulatory and economic development in order to attract foreign investment, offering liberal incentive packages and streamlining its regulatory processes.

As Thailand looks to propel itself from an economy driven by industry to one underpinned by technology, foreign expertise and investment will be crucial for growth. Under the country's ambitious new model for economic development, Thailand 4.0, the government continues to offer generous incentives to motivate investment in research and development, innovation, and technology-related sectors—such as telecommunications, green energy, electronics, and automation—through BOI and EEC programs. Thailand's development plans inevitably require digital infrastructure in addition to the lingering infrastructure gap in transport, energy and telecommunications sectors; subsequently, a growing number of PPI projects are available for bidding. As Thailand intensifies its efforts to meet infrastructure demand, PPP and PPI projects will undoubtedly continue to play a prominent role.

Along with the expansion and diversification of Thailand's economy, windows for foreign investment will continue to grow, particularly in sectors which involve advanced technology and innovation. Investors are encouraged to keep abreast of regulatory developments and government incentives in order to avail themselves of future opportunities.

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