2019
INVESTMENT POLICY
AND REGULATORY REVIEW

Thailand
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<thead>
<tr>
<th>AEC</th>
<th>ASEAN Economic Community</th>
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<tr>
<td>ASEAN</td>
<td>Association of South-East Asian Nations</td>
</tr>
<tr>
<td>B</td>
<td>Baht (currency)</td>
</tr>
<tr>
<td>BOI</td>
<td>Board of Investment</td>
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<tr>
<td>BOT</td>
<td>Bank of Thailand</td>
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<tr>
<td>BUILD</td>
<td>BOI Unit for Industrial Linkage Development</td>
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<tr>
<td>CPC</td>
<td>Central Product Classification</td>
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<tr>
<td>DG</td>
<td>Director General</td>
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<tr>
<td>DTAA</td>
<td>Double Taxation Avoidance Agreements</td>
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<tr>
<td>EPA</td>
<td>Economic Partnership Agreement</td>
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<tr>
<td>ESCO</td>
<td>Energy Service Company</td>
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<tr>
<td>FBA</td>
<td>Foreign Business Act</td>
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<td>FBL</td>
<td>Foreign Business License</td>
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<tr>
<td>FDI</td>
<td>Foreign Direct Investment</td>
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<tr>
<td>FET</td>
<td>Fair and Equitable Treatment</td>
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<td>FIE</td>
<td>Foreign-invested Enterprise</td>
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<tr>
<td>GATS</td>
<td>General Agreement on Trade in Services</td>
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<td>IBC</td>
<td>Thai International Business Center</td>
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<td>ICSID</td>
<td>International Centre for Settlement of Investment Disputes</td>
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<td>IEAT</td>
<td>Industrial Estate Authority of Thailand</td>
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<tr>
<td>IIA</td>
<td>International Investment Agreement</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>IPA</td>
<td>Investment Promotion Act</td>
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<td>IPC</td>
<td>Investment Promotion Certificate</td>
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<tr>
<td>IPR</td>
<td>Intellectual Property Rights</td>
</tr>
<tr>
<td>IPRR</td>
<td>Investment Policy and Regulatory Review</td>
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<tr>
<td>ISDS</td>
<td>Investor-State Dispute Settlement</td>
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<tr>
<td>JV</td>
<td>Joint Venture</td>
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<tr>
<td>MFN</td>
<td>Most-Favored-Nation</td>
</tr>
<tr>
<td>MOC</td>
<td>Minister of Commerce</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
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<td>---------</td>
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</tr>
<tr>
<td>NT</td>
<td>National Treatment</td>
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<td>OFDI</td>
<td>Outward Foreign Direct Investment</td>
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<td>OSOS</td>
<td>One Start One Stop Investment Center</td>
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<tr>
<td>PDPA</td>
<td>Personal Data Protection Act</td>
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<tr>
<td>SCM</td>
<td>Agreement on Subsidies and Countervailing Measures</td>
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<tr>
<td>SMEs</td>
<td>Small and Medium Enterprises</td>
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<tr>
<td>SOE</td>
<td>State-owned Enterprises</td>
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<tr>
<td>STI</td>
<td>Science, Technology and Innovation</td>
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<tr>
<td>TCC</td>
<td>Trade and Competition Commission</td>
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<tr>
<td>TIP</td>
<td>Treaty with Investment Provision</td>
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<td>TRIMs</td>
<td>Agreement on Trade-Related Investment Measures</td>
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<tr>
<td>TRIPS</td>
<td>Agreement on Trade-Related Aspects of Intellectual Property Rights</td>
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<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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<td>VAT</td>
<td>Value-added Tax</td>
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<td>WTO</td>
<td>World Trade Organization</td>
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INTRODUCTION

This Investment Policy and Regulatory Review (IPRR) presents information on the legal and regulatory frameworks governing foreign direct investment (FDI) and competition that affect businesses and foreign investors in Thailand. Since legal and regulatory frameworks are constantly evolving, a cut-off date was set for the research. This country review therefore covers information available as of May 31, 2019, unless otherwise indicated in the review. IPRRs are available for the following middle-income countries (MICs): Brazil, China, India, Indonesia, Malaysia, Mexico, Nigeria, Thailand, Turkey, and Vietnam.

The research for preparing this IPRR was undertaken by the international law firm Baker McKenzie, under the supervision of the World Bank Group. The research was primarily based on a review of currently applicable policies, laws and regulations. In some cases, consultations with regulators were conducted to collect up to date information.

The research was guided by a standardized questionnaire, covering a limited set of topics, including foreign investment entry, establishment, protection and select competition related aspects. The questionnaire focused on de jure frameworks as generally applicable to a foreign investor, not located in any specialized or preferential regime (such as special economic zones). It primarily focused on national, economy-wide (rather than sector-specific) laws and regulations. For the purpose of the research, it was assumed that the foreign investor is a private multinational company with no equity interest or

Figure 1. Overview of topics covered in IPRR
management control by the government of its home country (that is, not state-owned enterprise).

**There are aspects that this IPRR does not cover.**
It is not a comprehensive review of the entire legal and regulatory framework affecting investment. Information presented is not exhaustive, but illustrative of the main topics and issues covered (for example, it does not exhaustively list all available tax and financial incentives in the country). It does not present recommendations on reform areas. Notably, it does not capture de facto implementation of laws and regulations in the country. Given these limitations, information presented in this IPRR should be interpreted and used keeping in view the overall country context and realities. Further, it contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed legal research.

**This IPRR is organized as follows:**

- Section 2 provides an overview of the country’s investment policy framework, including the legal instruments regulating foreign investment, key institutions involved in investment promotion, as well as the country’s foreign investment promotion strategy; it also delineates the country’s international investment legal framework, including the country’s commitments under the World Trade Organization (WTO) and select international investment agreements (IIAs);
- Sections 3-6 cover the country’s policies and domestic legal framework concerning different dimensions of the lifecycle of an investment: entry and establishment (Section 3), protection (4), incentives (5) and linkages (6);
- Sections 7-9 explore emerging investment policy and regulatory areas — Section 7 considers outward FDI, Section 8 responsible investment, and Section 9 considers recent policies on new technologies;
- Section 10 focuses on city-specific investment policy and regulatory measures in the largest commercial center; and
- Section 11 covers select aspects of competition law and policy, specifically merger control and leniency frameworks.
2. OVERVIEW OF INVESTMENT POLICY FRAMEWORK

A. Domestic Legal Instruments Regulating Foreign Investment

Thailand has a specific foreign direct investment law that governs foreign investment in the country. In addition to this law, sector specific laws and bilateral and international treaties also regulate FDI in the country (in addition to the general legal framework applying to all businesses).

FDI Law and Regulation

The primary legislation governing foreign investment in the country is the Foreign Business Act B.E. 2542 of 1999 (FBA), as amended. The FBA regulates foreign investment and stipulates the limitations applicable to foreign investors in the country.

The FBA defines a business as foreign if (i) it is not incorporated in Thailand (that is, established under foreign law); or (ii) half or more of its capital is owned by foreigners (either individuals or legal entities) even if the company is incorporated in Thailand, or (iii) half or more of the value of the total capital is being invested by foreigners. It enumerates over forty categories of business activities divided into three lists (List 1, List 2 and List 3, described in Section 3 — Entry and Establishment) that are subject to prohibitions and different levels of restrictions for foreign investors.

The Investment Promotion Act B.E. 2520 (1977) (IPA) is another important law that affects foreign investors. It empowers the Board of Investment (BOI) to promote investments and business activities in Thailand in general, not just FDI. A business operator, whether Thai or foreign, who wishes to operate a business “promoted” by the BOI can apply to obtain an investment promotion certificate from the BOI.

Sector Specific Laws

The FBA expressly states that it shall not apply to matters specifically provided for under other laws, so that in certain sectors foreign investment is governed by sector-specific laws. Those laws will prevail if and to the extent that they regulate shareholding, partnership or investment of foreigners; permit or prohibit the operation of certain business activities relative to foreigners; or prescribe rules regarding operation of businesses of foreigners. As such, foreign investors are subject to sector-specific laws and regulations depending on the sector of the contemplated investment. For example, the Telecommunications Business Act B.E. 2544 (2001) prohibits the issuance of Type 2 and Type 3 telecommunication licenses to foreigners, permitting the issuance of only Type 1 licenses to foreigners. Similarly, the Financial Institution Business Act B.E. 2551 (2008) caps foreign investment in a Thai commercial bank to no more than 25% which may be increased on a case by case basis, up to 49% subject to approval by the Bank of Thailand, and above 49% subject to approval by the Ministry of Finance.

Public Access to Foreign Investment Laws and Policies

It is mandatory for the government to ensure public access to laws, regulations and other legal instruments relating to foreign investment. The Constitution of Thailand requires the government to ensure public access to all laws, including the country’s foreign investment laws. Pursuant to the Constitution, after a bill is approved by the National Assembly (the country’s legislative body), the Prime Minister must present the bill to the King for royal assent, following which the bill will come into force only after it is published in the Government Gazette. Pursuant to the Official Information Act, B.E. 2540 (1997), government
agencies are also mandated to disclose publicly all regulations and legal instruments such as ministerial regulations, Cabinet resolutions, orders, circulars, rules, and policies that have the same force as law, by publishing them in the Government Gazette.

**All laws and regulations are available online at the portal maintained by the Office of the Council of State, and periodically updated to reflect changes in laws and regulations.** This portal also contains local rules and regulations issued by the local administrative agencies. Further, laws and regulations concerning a particular regulator or sector are available online through the portals of the official department or the government agency responsible for such sector. For example, laws and regulations relative to the Foreign Business License (FBL) are available on the website portal of the Department of Business Development, the Ministry of Commerce.

**Consultation with Stakeholders**

**It is mandatory for the government to ensure consultation with stakeholders prior to passing any law or regulation.** The Constitution mandates that before the enactment of any law, the government must consult with stakeholders to thoroughly and systematically assess and analyze the effects of the law, disclose the results of the consultation and analysis to the public, and take stakeholder and public concerns into consideration at every stage of the legislative process. Further, the 2019 Act on the Criteria for Drafting the Law and Assessing the Effectiveness of the Law underscores the principle that a government agency must consult with stakeholders during the law drafting process, as specified in the Constitution. It also requires the concerned government agency to state clearly the reasons and necessity for the new law, undertake thorough cost-benefit analyses, and ensure no other suitable measures or methods exist to address the matter other than enacting a new law. In addition, after a law comes into force, the government must undertake a regular evaluation of its outcomes every five years. The government agencies are similarly mandated to consult with stakeholders in the drafting process for subordinate regulations. There is no specified statutory period during which the laws, regulations, or other measures must be made publicly available for comments before their passing. However, the Cabinet issued a resolution on April 4, 2017 as a guideline for the government agencies to conduct public hearings during the drafting of laws and regulations for at least 15 days via websites or by other means.

**B. International Legal Instruments Regulating Foreign Investment**

Thailand has undertaken legally binding international investment commitments through a variety of international investment agreements (IIAs) — signed at the bilateral, plurilateral and multilateral level. These commitments mainly cover entry and establishment conditions, protection, as well as the legality of specific types of incentives (see Table 1). It is important for Thailand to reflect these commitments in its domestic legal framework to ensure consistency as well as to monitor compliance.

**Having been a member of the World Trade Organization (WTO) since January 1, 1995, Thailand has commitments under several WTO Agreements.** Under the General Agreement on Trade in Services (GATS), Thailand grants rights to services suppliers from other WTO member countries. These include services supplied through commercial presence (defined as establishment of a territorial presence), in other words through FDI. These rights are granted through commitments undertaken in “schedules”. The “schedules” list sectors being opened, the extent of market access being given in those sectors (for example, whether there are any restrictions on foreign ownership), and any limitations on national treatment (whether some rights granted to local companies will not be granted to foreign companies). Thailand has made commitments to market access and national treatment (NT) in 11 out of 12 services sectors in the WTO Classification:¹ (i) Business services, (ii) Communication services, (iii) Construction and related engineering services, (iv) Distribution services, (v) Educational services, (vi) Environmental services, (vii) Financial services, (viii) Health related and social services, (ix) Tourism and travel related services, (x) Recreational, cultural and sporting services, and (xi) Transport services. In these 11 sectors, Thailand has made partial commitments towards
Table 1. Thailand’s International Investment Framework

<table>
<thead>
<tr>
<th>Agreement(s) as basis of commitments</th>
<th>Type of Agreement</th>
<th>Investment Policy Dimensions Covered</th>
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<tbody>
<tr>
<td>WTO GATS Agreements</td>
<td>Multilateral</td>
<td>Entry and establishment</td>
</tr>
<tr>
<td>WTO TRIMs Agreement</td>
<td>Multilateral</td>
<td>Entry and establishment, Incentives</td>
</tr>
<tr>
<td>WTO SCM Agreement</td>
<td>Multilateral</td>
<td>Incentives</td>
</tr>
<tr>
<td>WTO TRIPS Agreement</td>
<td>Multilateral</td>
<td>Protection</td>
</tr>
<tr>
<td>Treaties with Investment Provisions</td>
<td>Plurilateral or Bilateral</td>
<td>May cover entry and establishment, protection, incentives</td>
</tr>
<tr>
<td>(23 signed, 20 in force)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bilateral Investment Treaties</td>
<td>Bilateral</td>
<td>May cover entry and establishment, protection, incentives</td>
</tr>
<tr>
<td>(39 signed, 36 in force)</td>
<td></td>
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<tr>
<td>Convention on the Recognition and</td>
<td>Multilateral</td>
<td>Protection</td>
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<tr>
<td>Enforcement of Foreign Arbitral</td>
<td></td>
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<tr>
<td>Awards (New York Convention)</td>
<td></td>
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<tr>
<td>IMF Articles of Agreement</td>
<td>Multilateral</td>
<td>Protection</td>
</tr>
<tr>
<td>(Art. VIII Acceptance)</td>
<td></td>
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</tr>
<tr>
<td>Double Taxation Avoidance Agreements</td>
<td>Bilateral</td>
<td>Taxation</td>
</tr>
<tr>
<td>(71 treaties in force)</td>
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</table>

Source: World Bank Analysis

Market access and national treatment for specific services in 29 sub-sectors. “Partial” means that although commitments have been made, there are still limitations and/or reservations, which may differ in their restrictiveness. For example, they may be more restrictive by limiting the equity contribution of the foreign investor, or less restrictive by merely requiring foreign service suppliers to become a member of a union chamber. In addition, under GATS every member is obligated to unconditionally extend to service suppliers of all other WTO members most-favored nation (MFN) treatment. However, Thailand has made reservations in that regard. It reserves the right to discriminate on specific grounds between foreign investors in certain business and transport services, and across all sectors to only grant American citizens and entities national treatment with respect to operating a business and providing services in Thailand.

Under the WTO Agreement on Trade Related Investment Measures (TRIMs), Thailand has committed not to apply certain investment measures that restrict or distort trade (local content requirements, trade balancing requirements, foreign exchange restrictions and export restrictions). These measures are prohibited both when the obligation for the foreign investors is mandatory and when it is tied to obtaining an advantage (that is, an incentive). Incentives are further regulated by the WTO Agreement on Subsidies and Countervailing Measures (SCM), which among others prohibits certain types of export subsidies. Under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), foreign investors’ intellectual property rights are protected. In case of a violation of any of its WTO commitments, Thailand may be sued under the WTO dispute settlement mechanism.

Thailand has further entered into obligations through international investment agreements (IIAs) — 36 Bilateral Investment Treaties (BITs) and 20 Treaties with Investment Provisions (TIPs) are currently in force. The latter category comprises treaties that include obligations commonly found in BITs (for example, a preferential trade agreement with an investment chapter), or treaties with limited investment related provisions. Table 2 provides an overview of select Agreements: Thailand’s IIA with the largest home country measured by that country’s share in Thailand’s total FDI stock (Japan-Thailand Economic Partnership Agreement, 2007), an IIA with expansive regional coverage (ASEAN-China...
Table 2. Comparison of Thailand’s Select IIAs

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<tr>
<td>Covers pre-establishment</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Exclusions from scope</td>
<td>Measures pursuant to immigration laws and regulations, Government procurement</td>
<td>-</td>
<td>Taxation (except expropriation and transfers), government procurement, subsidies or grants, services supplied in the exercise of governmental authority</td>
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<tr>
<th>Standards of Treatment</th>
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<tr>
<td>National Treatment (NT)</td>
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<tr>
<td>Most-Favored Nation Treatment (MFN)</td>
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<tr>
<td>Fair and Equitable Treatment (FET)</td>
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<tr>
<td>Full Protection &amp; Security</td>
</tr>
<tr>
<td>Expropriation</td>
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<tr>
<td>Rights to Transfer Funds</td>
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<tr>
<td>Prohibition of Performance Requirements</td>
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<tr>
<th>Dispute Resolution</th>
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<tr>
<td>State-State Dispute Settlement</td>
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<td>Investor-State Dispute Settlement</td>
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</tbody>
</table>

Source: World Bank analysis based on IIAs obtained from United Nations Conference on Trade and Development (UNCTAD) Investment Policy Hub

Investment Agreement, 2018) as well as its latest IIA (Thailand-United Arab Emirates BIT, 2016). The table shows that generally the main protection guarantees are provided in the reviewed agreements. This includes access to investor-state dispute settlement (ISDS), although for the BIT with UAE access is contingent upon using the domestic court system for a period of 6 months. Both the Japan-Thailand EPA and the ASEAN-China Investment Agreement include a provision prohibiting the use of performance requirements. Whereas the former makes a reference to TRIMs and further makes sector and country specific commitments included in a schedule, the latter prohibits a larger number of performance requirements than in TRIMs in all sectors (a so-called TRIMs+ standard).
Some of Thailand’s reviewed IIAs contain commitments to liberalize. Both the EPA with Japan and the ASEAN-China Investment Agreement include such commitments, but with a different scope and under reservations. The former provides national treatment and the latter MFN in the pre-establishment phase. The Japan-Thailand EPA, as part of a schedule included as Annex 6 of the Agreement, sets out a list of sectors for which the countries make positive commitments to liberalize. The ASEAN-China Investment Agreement does not include such a list. It also maintains reservations for any existing or new measures that do not conform with commitments under the agreement, thereby diluting the commitments.

Thailand is a member of the New York Convention that facilitates enforcement of arbitral awards. The country has also signed the International Centre for Settlement of Investment Disputes (ICSID) Convention in 1985, but has not ratified it, meaning that the convention has not entered into force in Thailand. Thailand has been a respondent in two publicly known investor-State arbitrations. The first case, initiated in 2005 by a German investor, involved a concession agreement to construct and operate a toll highway in Bangkok. The tribunal decided in favor of the investor, finding a breach of fair and equitable treatment due to the failure of Thai authorities to approve toll hikes as contemplated in the concession contract. The second dispute was initiated in 2017 by an Australian investor who held a metallurgical processing license of the Chatree gold mine located in central Thailand. The investor alleged indirect expropriation of the mine through measures taken by the Government in 2016, including non-renewal of the investor’s processing license for the mine beyond 2016 and an order to suspend all gold mining and related activities in the country by the end of 2016.

Acceptance of Art. VIII of the IMF Articles Agreement requires Thailand maintain current account convertibility, enabling investors to transfer certain payments related to their investments. Thailand is also party to 71 Double Taxation Avoidance Agreements (DTAAs) that are in force, influencing its ability to tax foreign investors and investments.

C. Key Institutions for Investment Promotion

Thailand has a national-level investment promotion agency charged with investment promotion functions for foreigners and Thais. There are no sub-national level or local agencies charged with promoting FDI.

National Level Institutions:

The Thailand Board of Investment (BOI), a government agency under the Office of the Prime Minister, is the main national-level investment promotion agency charged with the responsibility to promote investments in Thailand by Thais and foreigners, as well as overseas investments. In particular, the main objective and vision of the BOI is to promote inbound and outbound investment to enhance Thailand’s competitiveness, to overcome the “middle income trap”, and to achieve sustainable growth and promote investment activities that are beneficial to the economic and social development and security of the country. The BOI is comprised of the Prime Minister (as the Chairman), the Minister of Industry (as the Vice Chairman), up to 10 experts (for example, ministers or senior government officials) as appointed by the Prime Minister, and the Secretary General. The Prime Minister may also appoint up to five other experts as advisors.

The Investment Promotion Act mandates the BOI to designate the types and sizes of investments eligible for promotion (that is, targeted for increasing investment and therefore eligible for receiving tax and non-tax incentives) in the country. The BOI has the power to stipulate the conditions applicable to a promotion, amend or abolish the stipulated conditions at any time, or cancel a promotion temporarily or permanently if it deems the underlying activity is no longer to be promoted in the country.

The BOI is also empowered with regulatory functions. These include powers to review investment promotion applications, grant investment tax and non-tax incentives, impose conditions, issue investment promotion certificates, and/or revoke rights and benefits granted to the promoted business, in accordance with the Investment Promotion Act.
Sub-National Investment Promotion Agencies:

There are no sub-national agencies charged with foreign investment promotion functions.

D. Foreign Investment Promotion Strategy

The country’s current investment promotion strategy is set out in its Seven Year Investment Promotion Strategy (2015-2021): Investment Promotion Criteria and Activities and in the Announcement of the Board of Investment No. 2/2557: Policies and Criteria for Investment Promotion (BOI Announcement No. 2/2557).

The main thrust of the investment promotion policies is to:

- Promote investment that helps enhance national competitiveness by encouraging R&D, innovation, value creation in the agricultural, industrial and services sectors, small-and-medium enterprises (SMEs), fair competition and inclusive growth;
- Promote activities that are environmentally-friendly, save energy or use alternative energy to drive balanced and sustainable growth;
- Promote clusters to create investment concentration in accordance with regional potential and strengthen value chains;
- Promote investment in border provinces in Southern Thailand to help develop the local economy, which will support efforts to enhance security in the area;
- Promote special economic zones, especially in border areas, both inside and outside industrial estates, to create economic connectivity with neighboring countries and to prepare for entry into the ASEAN Economic Community (AEC);
- Promote Thai overseas investment to enhance the competitiveness of Thai businesses and Thailand’s role in the global economy.

Certain activities are itemized, as having special importance and benefits to the country. Incentives are offered for investments in the following categories:

- Category 1.3 — Economic forest plantations (except for Eucalyptus);
- Category 3.9 — Creative product design and development centers;
- Category 4.11.1 — Manufacture of airframes, airframe parts and major aircraft appliances, for example, engines, aircraft parts, propellers and avionics;
- Category 5.6 — Electronic design;
- Category 5.7 — Software;
- Category 7.1.1.1 — Production of electricity or steam power from waste or refuse-derived fuel;
- Category 7.8 — Energy Service Company (ESCO);
- Category 7.9.2 — Industrial zones or technology industrial zones;
- Category 7.10 — Cloud services;
- Category 7.11 — Research and development;
- Category 7.12 — Biotechnology;
- Category 7.13 — Engineering design;
- Category 7.14 — Scientific laboratories;
- Category 7.15 — Calibration services;
- Category 7.19 — Vocational training centers.

The country’s investment promotion strategies for targeted industries and regions can be found in specific laws.

- The National Competitiveness Enhancement Act for Targeted Industries B.E. 2560 was enacted in 2017 to improve the investment promotion measures and tools to increase efficiency in attracting investments in the targeted industries and enhancing the level of competitiveness.
relative to other countries in the region. The Act provides tax and non-tax benefits, and establishes a fund for promoted investments. Currently, the “targeted industries” specified by the subordinate legislation are:

- Next-generation automotive industry;
- Intelligent electronics industry;
- Quality tourism industry;
- Agriculture and biotechnology industry;
- High-value food processing industry;
- Robotics industry;
- Aviation industry;
- Biofuel and biochemical industry;
- Digital industry;
- Medical hub industry;
- National defense industry;
- Industry directly and significantly supporting a more circular economy for example, producing fuel from waste, water resource management, and so on.

The Eastern Special Development Zone Act B.E. 2561 was enacted in 2018 to specify certain areas in the eastern part of Thailand as special development zones. The relevant subordinate legislation prescribes Chachoengsao, Chonburi, and Rayong provinces as the investment promotion zones consisting of (i) special business promotion zones of Eastern Airport City, Eastern Economic Corridor of Innovation and Digital Park Thailand, (ii) targeted industries promotion zones, and (iii) industrial estates or industry promotional zones.

**Foreign investment reforms in the country are driven by the Foreign Business Commission established under the FBA.** The Commission has the responsibility to undertake a periodic review of the FBA lists restricting FDI and provide advice and recommendations to the Minister of Commerce on categories of businesses for foreign participation, including assessment of impact on the Thai economy.

**There are two other high-level committees tasked with responsibility for driving investment reforms in general (not specifically foreign investment) for targeted industries and special economic zones:**

- The National Competitiveness Enhancement Policy Committee established under the National Competitiveness Enhancement Act for Targeted Industries Act.
- The EEC Policy Committee established under the Eastern Special Development Zone Act.
3. INVESTMENT ENTRY AND ESTABLISHMENT

Market Entry and Sectoral Limitations

Foreign investment is expressly prohibited in certain business activities (Prohibited Sectors) and restricted in certain others (Restricted Sectors) pursuant to Appendix 1 of the Foreign Business Act.

More specifically, the FBA differentiates between 3 types of business:

- **List 1** covers businesses strictly prohibited to foreign investors.

- **List 2** covers businesses prohibited to foreign investors for reasons of national security or impact on natural resources, environment or Thai culture, arts, traditions, and folklore handicrafts, unless a foreign investor obtains permission from the Minister of Commerce with the approval of the Thai Cabinet.

- **List 3** covers businesses prohibited to foreign investors for reasons relating to Thai nationals’ non-readiness to compete, unless a foreign investor obtains permission from the Director-General of the Department of Business Development with the approval of the Foreign Business Commission.

Pursuant to the FBA, foreign investors from countries with which Thailand has a treaty are exempt from these restrictions subject to the provisions under the respective treaties. For industries not included in these three Lists, the general position is that foreign investors are accorded equal treatment as afforded to domestic investors and FDI is permitted without restrictions or the need to obtain a Foreign Business License, subject to applicable sector-specific laws and regulations.

Regarding foreign land ownership, land may only be owned by Thai nationals or companies in which Thai nationals own 51% or more of the registered share capital and more than half the number of its shareholders are Thai nationals. Nonetheless, foreign land ownership exceptions may be granted for businesses receiving investment promotion certificates from the BOI, oil concessions under the Petroleum Act, and businesses located in certain industrial estates.

Prohibited and Restricted Sectors

Table 3 lists Prohibited and Restricted Sectors based on the three Lists in the FBA.
### Table 3. List of Major Prohibited and Restricted Sectors

<table>
<thead>
<tr>
<th>List 1 — Prohibited Sectors</th>
<th>Scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>Rice farming, plantation or crop growing.</td>
</tr>
<tr>
<td>Fishery</td>
<td>Fishery, only in respect of catching marine animals in Thai waters and in specific economic zones of Thailand.</td>
</tr>
<tr>
<td>Livestock</td>
<td>Livestock farming.</td>
</tr>
<tr>
<td>Forestry</td>
<td>Forestry and timber processing from a natural forest.</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>Making or casting images of the Buddha and bowls for monastic alms.</td>
</tr>
<tr>
<td>Trading</td>
<td>Trading and auctioning Thai antiques or antiques of national historical value.</td>
</tr>
<tr>
<td>Medicine</td>
<td>Extraction of Thai medicinal herbs.</td>
</tr>
<tr>
<td>Press, radio, broadcasting</td>
<td>Press, radio broadcasting station or radio and television station business.</td>
</tr>
<tr>
<td>Land</td>
<td>Land trading.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>List 2 — Restricted Sectors</th>
<th>Requiring Permission from Minister of Commerce and Cabinet — FBL required</th>
<th>Foreign Equity Cap</th>
</tr>
</thead>
</table>
| Group 1 — Businesses concerning national security or safety |  - Manufacturing, distribution, repair or maintenance of:  
  - Firearms, ammunition, gunpowder, and explosive materials.  
  - Components of firearms, ammunition, and explosive materials.  
  - Armaments, ships, aircraft, or military vehicles.  
  - Equipment or parts of any type of war equipment.  
  - Domestic land transportation, water transportation, or air transportation, including domestic aviation. | Up to 60%; may be increased up to 75% with Cabinet approval |
| Group 2 — Businesses with adverse effect on arts and culture, customs, and native manufacturing/handicrafts |  - Trading of antiques or artifacts that are Thai works of art or Thai handicrafts.  
  - Wood carving.  
  - Silkworm rearing, manufacture of Thai silk, Thai silk weaving, or Thai silk printing.  
  - Manufacturing of Thai musical instruments.  
  - Manufacturing of gold-ware, silverware, nielloware, bronzeware, or lacquerware.  
  - Making bowls or earthenware which are of Thai art and culture. | Up to 60%; may be increased up to 75% with Cabinet approval |
| Group 3 — Businesses with adverse effect on natural resources or the environment |  - Manufacturing of sugar from cane.  
  - Salt farming, including rock salt farming.  
  - Mining of rock salt.  
  - Mining, including stone quarrying or crushing.  
  - Timber processing for making furniture and utilities. | Up to 60%; may be increased up to 75% with Cabinet approval |
| Insurance                   | Life insurance and non-life insurance company | Up to 25% |

<table>
<thead>
<tr>
<th>List 3 — Restricted Sectors</th>
<th>Requiring Permission from Department of Business Development and Foreign Business Commission — FBL required</th>
<th>Foreign Equity Cap</th>
</tr>
</thead>
</table>
| Agriculture, Fishery, Horticulture, Livestock |  - Rice milling and flour production from rice and plants.  
  - Fisheries, specifically breeding of aquatic creatures.  
  - Forestry from re-planting.  
  - Planting and culture of plants. | Up to 100% |
<table>
<thead>
<tr>
<th>Sector</th>
<th>Allowed Activities</th>
<th>Foreign Capital Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufacturing and Production</td>
<td>Production of plywood, veneer, chipboard or hardboard.</td>
<td>Up to 100%</td>
</tr>
<tr>
<td></td>
<td>Production of lime.</td>
<td></td>
</tr>
<tr>
<td>Construction</td>
<td>Except:</td>
<td>Up to 100%</td>
</tr>
<tr>
<td></td>
<td>Construction of infrastructure in public utilities or communications requiring tools, technology or special expertise in such construction where the minimum foreign capital is 500 million baht (B) or more from foreigners.</td>
<td></td>
</tr>
<tr>
<td>Agency or Brokerage</td>
<td>Except:</td>
<td>Up to 100%</td>
</tr>
<tr>
<td></td>
<td>Brokerage or agency of securities or service related to future agricultural commodities futures or financial instruments or securities.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Brokerage or agency for the purchase/sale or procurement of goods or services necessary to production or providing services to affiliated enterprises.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Brokerage or agency for the purchase or sale, distribution or procurement of markets, both domestic and overseas for the distribution of products made in Thailand, or imported from overseas in the category of international business, with minimum foreign capital of B100 million or more.</td>
<td></td>
</tr>
<tr>
<td>Auctioneering</td>
<td>Except:</td>
<td>Up to 100%</td>
</tr>
<tr>
<td></td>
<td>Auctioneering in the manner of international bidding, not being auctions of antiques, ancient objects or artifacts that are Thai works of art, Thai handicrafts or antique objects, or with Thai historical value.</td>
<td></td>
</tr>
<tr>
<td>Trading</td>
<td>Domestic trade in local agricultural products not prohibited by law.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Retailing all categories of goods having less than B100 million capital in total or having the minimum capital of each shop of less than B20 million.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Wholesaling all categories of goods having minimum capital of each shop less than B100 million.</td>
<td></td>
</tr>
<tr>
<td>Food and Beverage</td>
<td>Sale of food and beverage</td>
<td>Up to 100%</td>
</tr>
<tr>
<td>Hospitality</td>
<td>Hotel operation, excluding hotel management.</td>
<td>Up to 100%</td>
</tr>
<tr>
<td>Professional services</td>
<td>Accountancy.</td>
<td>Up to 100%</td>
</tr>
<tr>
<td></td>
<td>Legal services.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Architecture.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Engineering.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other services, except those prescribed in the ministerial regulations.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>“Other services” serves in practice as a “catch-all” service category. As such, foreign investment in any services business even if not contained in List 3, would trigger requirement to obtain a Foreign Business License prior to commencing operation.</td>
<td></td>
</tr>
<tr>
<td>Tourism</td>
<td>Guided touring</td>
<td>Up to 100%</td>
</tr>
</tbody>
</table>

Source: Analysis by Baker McKenzie based on country’s laws and regulations.

Note: The table is based on a review of 32 specific sectors identified for the purpose of this research. The list of sectors is therefore not exhaustive.²
Forms of Establishment

Foreign investors can generally hold any type of shares in a Thai-incorporated company. There is no special requirement or restriction on the type of local entity a foreign investor may invest in or establish, subject to obtaining the necessary regulatory approvals. A foreign investor may hold 100% of the shares in an incorporated local entity if (i) the subject business activity is not reserved for Thai nationals or restricted to foreigners under the FBA or other applicable laws, (ii) it has obtained a foreign business license or foreign business certificate (as applicable), (iii) it has obtained an investment promotion certificate from the BOI, or (iv) it qualifies as such under international or bilateral treaties to which Thailand is a party. In business activities where foreign ownership is restricted, it is common for a foreign investor to form a joint venture with one or more Thai partners.

Foreign ownership is not constrained by restrictions on mergers and acquisitions, unless the transaction falls within the prohibited or restricted sectors (for example, List 1 and List 2 of the FBA) subject to foreign equity restrictions under the FBA or other sector specific laws. In that case, the foreign investor would not be able to acquire shares in that sector above the prescribed FDI equity caps.

Minimum Investment Requirements

The amount of minimum investment requirement is determined by the type of investment. Generally, the minimum capital of a foreign investor for commencing business in Thailand must be no less than B2 million. However, if the foreign investor’s business activity falls under List 2 of the FBA (that is, it is a restricted activity) for which an FBL is required, the requirement is increased to B3 million or 25% of the annual average of three-year projected expenses, whichever is greater. Accordingly, for FDI in a Restricted Sector, the foreign investor is required to submit three-year projections of income and expenses along with the FBL application. The minimum capital must be remitted into the country within 3 years of the date of commencement of the business operation or the date of permission granted to the foreign investor regarding the restricted activity (as applicable), with at least 25% remitted in the first 3 months, and total of 50% within the first year. Of the remainder, at least 25% must be remitted to the country each of the remaining two years. If the period of business operation is less than 3 years, then the minimum capital must be remitted to the country within 6 months of the date of commencement of business operation or date of permission (as applicable). The time period for remittance is typically 5 years (instead of 3 years) for investors having protections under international or bilateral treaties with Thailand.

Restrictions on Expatriate Appointments

There are several restrictions on expatriate appointments. The FBA requires that Thai nationals must make up at least 40% of the total number of directors of companies operating businesses under List 2 of the FBA. The Thai law on private limited companies does not stipulate any limitation on the director’s nationality or residency, while the law on public limited companies requires that the majority of directors reside in Thailand. Sector-specific laws may also impose similar requirements. For example, 75% of directors of an insurance company and 50% of directors in a tour guide company must be Thai. There are no general limitations on the appointment of foreigners to key managerial positions of local companies.

Granting of work permits is subject to conditions under Thai laws, for example:

- If the employer is a juristic person, the juristic person must have fully paid-up registered capital of at least B2 million and employ four Thai citizens to be able to sponsor 1 work permit. Each additional foreign employee requires a respective capital increase of B2 million, and the number of work permits available to be sponsored is capped at 10; and

- If the employer is a branch office of the overseas juristic person, the foreign investment amount should be at least B3 million to be able to sponsor 1 work permit. Each additional foreign employee requires a respective capital increase of B3 million and the number of work permits available to be sponsored is capped at 10.
It is generally required that the ratio of foreign to Thai employees be 1:4. As such, a foreign investor must employ at least 4 Thai nationals to be able to sponsor the long-term visa of one foreign employee. This requirement may be waived if the employer company obtains an “investment promotion” from the BOI. However, the company will still need to justify the need to hire expats over Thai nationals for approval. The approvals are subject to the sole discretion of the officials, in determining the necessity and suitability for employing foreign nationals in such positions. The employment of Thai nationals is also among the factors that the Foreign Business Commission would take into consideration when granting an FBL to a foreign investor. The process for obtaining a work permit is prescribed in written regulations, including the Emergency Decree on Managing the Work of Aliens B.E. 2560 (2017) and the Ministerial Regulations Regarding the Work Permit Application, Issuance and the Notification of the Work of the Foreigner B.E. 2554 (2011). However, the practice of officials in this regard may not be completely consistent with the written regulations.

Local Sourcing and R&D Requirements

There are no overarching local sourcing requirements or local R&D investments needed in order to establish business in Thailand.

Foreign Investment Approval

A foreign investor is required to obtain a Foreign Business License to operate a business in any of the restricted categories in List 2 or List 3 of the FBA, unless the foreign investor is exempted under one of the following exceptions:

- Foreign investor qualifies under relevant treaty protection;
- Foreign investor obtains an Investment Promotion Certificate from the BOI; or
- Foreign investor obtains license to operate in the industrial or export estate from the Industrial Estate Authority of Thailand (IEAT).

If any of the foregoing exceptions apply, then the foreign investor must only obtain a “Foreign Business Certificate”, which is a less arduous process than obtaining a FBL. The process for obtaining a FBL takes four to six months and there is no guarantee that the FBL will be granted. A FBL is generally valid for the duration of the permitted business activity.

For FDI in a business activity under List 2 of the FBA, the foreign applicant must make a FBL application in the prescribed manner to the Minister of Commerce (MOC) The MOC and the Cabinet have 60 days to consider the application for approval. Once the Cabinet approves the project, the MOC is required to issue a FBL within 15 days from Cabinet’s approval. At the time of issuing a FBL, the MOC may prescribe conditions with which the foreign investor must comply in order to operate the approved business activity. If the Cabinet refuses to provide approval, the MOC is obligated to notify the applicant within 30 days along with clear reasons for refusal.

In considering applications for FDI beyond the 60% foreign equity threshold for List 2 activities, the MOC (with Cabinet’s approval) has the discretion to increase the FDI limits to 75% on a case-by-case basis, based on the following factors:

- Advantageous and disadvantageous effects on national safety and security, economic and social development of the country, public order or good morals, national values in arts, culture, traditions and customs;
- Impact on natural resources conservation, energy, environmental preservation, consumer protection;
- Size of undertakings;
- Employment of Thai nationals; and
- R&D and technology transfer to Thai nationals.
For FDI in a business activity under List 3 of the FBA, the foreign applicant must make a FBL application in the prescribed manner to the Director General of the Department of Business Development, Ministry of Commerce (DG). Similar to the FBL process for List 2 business activities, the DG has 60 days to consider the application for approval. Once the DG approves the project, the DG is required to issue a FBL within 15 days from the approval. At issuance of a FBL, the DG may prescribe conditions with which the foreign investor must comply in operating the approved business activity. If the DG refuses to provide approval, the DG is obligated to notify the applicant within 15 days of the decision along with clear reasons for refusal. A foreign investor may appeal the DG’s refusal to the Minister of Commerce.

Under the FBA, foreigners who have obtained a FBL to engage in businesses categorized under List 2 or List 3 of the FBA will be subject to the following conditions:

- Minimum capital-to-loan ratio. The ratio is currently 1:7.
- At least one authorized director/responsible person must have domicile or residence in Thailand.
- Minimum capital amount of at least B3 million or 25% of the annual average of three-year projected expenses, whichever is greater.

When considering projects to grant a FBL, the MOC or the DG may take into account whether the new investment will have negative impact on the business of Thai citizens and accordingly prescribe conditions at the time of issuing the FBL, on a case by case basis.

An Investment Promotion Certificate (IPC) is issued by the BOI to an investor, whether Thai or foreign, who wishes to invest in Thailand. An IPC is not a mandatory requirement under the law. Rather, it is a tool used by the Thai government to attract investment in “promoted” business activities in the country by offering incentives to qualifying investors. Not all types of business activity qualify for an IPC. The investor must meet the investment type, size and eligibility criteria specified by the BOI. Upon BOI’s approval of the applicant’s investment proposal, the BOI will issue the IPC and grant tax and non-tax incentives subject to any conditions it stipulates in the IPC. These conditions may be in the form of amount and source of capital, nationality and number of shareholders and workers, size of activity and types of products, date of project commencement, reporting requirements, import/export of machinery, standards compliance and period of time, to name a few. The BOI is obligated to notify the applicant within 15 days of the BOI’s resolution to grant the “investment promotion” to the applicant, subject to certain extensions of time. In practice, BOI’s proposal evaluation can take 2-5 months or more depending on the nature and size of the proposed project. The applicant must confirm acceptance within 1 month of such notification to the applicant and commence the project within 6 months from confirming acceptance, subject to extensions for up to an additional 1 year on reasonable grounds.
Protection Against Expropriation

There is no omnibus expropriation legislation in the country. The FBA does not explicitly provide protections to foreign investors against direct or indirect expropriation measures. However, both foreign and Thai investors who receive an investment promotion certificate from the BOI pursuant to the Investment Promotion Act are accorded protection against nationalization from the state. The Land Expropriation Act B.E. 2530 (1987), applicable to both foreigners and Thais, permits the state to acquire or expropriate land or immovable property only if it deems necessary for any public interest purpose prescribed under the Act, which include the following purposes:

- Public utilities;
- National defense;
- Obtaining natural resources;
- Town planning;
- Agricultural development;
- Industrialization; or
- Land reform.

Requirements for the expropriation process and reasonable compensation are also set out under the Land Expropriation Act. For example, in determining the compensation, the following factors, among others, must be taken into account:

- Market price of the immovable property to be expropriated;
- Price of immovable property which is appraised for the purpose of paying local maintenance taxes;
- Condition and a location of the immovable property; and
- Cause and purpose of the expropriation.

The Administrative Procedure Act of 2006 prescribes requirements on procedural due process, which is applicable to any persons (regardless of nationality) who are subject to the administrative decision-making process. According to the Act, the relevant parties are allowed to present facts and arguments to the competent official before the decision is made, and are also entitled to appeal the decision according to the process prescribed under this Act or any other specific laws (as applicable).

Thailand has entered into international investment agreements that guarantee protection to foreign investments against certain government measures, including expropriation, which may unduly harm the investment. As such, these treaties generally afford some protection against expropriation of investments belonging to nationals and companies of the countries that are party to these treaties, although the scope differs (see Section 2.B. — International Legal Framework).

Restrictions on Inflow and Outflow of Funds

Thailand regulates the inflow and outflow of funds pursuant to its exchange control laws (that is, Exchange Control Act B.E. 2485 (1942), as amended from time to time, and regulations promulgated thereunder). Approvals for transactions subject to the exchange control laws are delegated by the central Bank of Thailand (BOT) to the commercial banks in Thailand, with the exception of some transactions that require the BOT’s approval. Generally, there are no restrictions on the capital inflows and outflows, including foreign loans (net of applicable taxes and subject to other standard compliances). They are freely permitted into the country provided the transactions are conducted through authorized commercial banks.
Inflow of Funds

There are no requirements or restrictions specifically imposed on a foreign investor regarding the inflow of funds into the country, but the exchange control laws impose reporting obligations on Thai residents and not on the foreign investor. With respect to equity investment for the purpose of incorporating a company in Thailand, there are no requirements from an exchange control law perspective (that is, the foreign investors can freely remit money into Thailand for setting up a company in Thailand). However, the foreign investor would have to inject such funds into Thailand prior to its proceeding with incorporation registration with the Ministry of Commerce. Similarly, no restrictions are imposed on a foreign investor (or a foreign lender) in remitting the loan proceeds into Thailand. Rather, the obligation is imposed on a Thai borrower to transmit/remit the loan proceeds into Thailand immediately upon receipt of the offshore loan proceeds and to convert the same into THB or deposit it into a foreign currency deposit account opened with a commercial bank in Thailand within 360 days from the repatriation date.

Outflow of Funds

To effect an outbound transfer, BOT's prior approval is generally required unless the transfer falls within a “permissible” transaction prescribed by the BOT. In such cases, the transfer can be effected net of applicable taxes and with the requisite supporting documents to the satisfaction of a commercial bank in Thailand acting as a remitting bank.

The supporting documents required to effect the transfer of payment under each permissible transaction are those proving:

- Sale transaction: a document evidencing the sale transaction (for example, sale and purchase agreement);
- Liquidation proceeds: certificate of completion of liquidation of a company issued by liquidator;
- Capital gain proceeds: document evidencing a sale of shares (for example, share subscription agreement);
- Dividend payments: a document evidencing dividend payment of a share issuing company (for example, shareholder resolution approving dividend payment);
- Repayment of loan proceeds and interest thereof: loan agreement, document evidencing a repatriation of loan proceeds into Thailand (for example, credit advice), and document evidencing a calculation method for interest payment (in case of interest payment);
- Technical fees and wages: a document evidencing a receipt of services (for example, service agreement), and, in case a service receiver is a juristic person, an invoice indicating name of a service provider, and so forth.

Trade related outbound payments are deemed permissible transactions on the condition that such payments are built in as part of a service fee payable to a service provider. To this end, supporting documents required are those necessary for the settlement of service fee, for example: a document evidencing a receipt of services (a service agreement); and, in case a service receiver is a juristic person, an invoice indicating name of a service provider. Proceeds of exports valued at more than USD 50,000 or equivalent per transaction must be repatriated to Thailand after payment is received not to exceed 360 days from the export date and must be deposited with the commercial bank within 360 days of receipt or entry into the country.

Pursuant to the exchange control laws, a conversion of Baht into foreign currency and outward remittance of the same may be prohibited, unless the transfer is related to a permissible transaction or a prior approval from the BOT is obtained. If the outward payments are made under the permissible transactions, the conversion of currency for the purpose of settlement could be at an exchange market rate (that is, the spot rate). Apart from requirements on permissible transaction and supporting document(s) to effect the transfer, the Exchange Control Law does not stipulate the procedural steps in converting and transferring of currency to foreign jurisdictions. Therefore, the process depends largely on the procedures prescribed by each commercial bank.
Dispute Settlement

Foreign investors have access to international arbitration, domestic courts, and domestic arbitration. Thai arbitration law does not separate arbitration law regimes between domestic and international arbitrations. Therefore, both arbitrations seated in Thailand and those seated abroad are subject to the same act, which is the Arbitration Act B.E. 2545 (2002), based on the UNCITRAL Model Law on International Arbitration. Foreign investors are not required to exhaust local remedies (local courts) before referring the dispute to international arbitration.

There is no formal institutional mechanism specifically established to address grievances between foreign investors and the State, prior to escalation into legal disputes.

5. INVESTMENT INCENTIVES

Thailand’s investment incentives regime applies equally to both domestic and foreign investors. There are no incentives specifically targeted to foreign investments only.

The Investment Promotion Act provides the legal and administrative framework to grant investment incentives to promote investments in the country. The BOI issues written policies stipulating the promoted businesses, and applicable criteria and conditions for granting investment promotion certificate. It grants tax and non-tax incentives to promoted businesses in the following core business categories:

- Agriculture and agricultural products;
- Mining, ceramics, and basic metals;
- Light industry;
- Metal products, machinery, and transportation equipment;
- Electronic industry and electrical appliances;
- Chemicals, paper, and plastics;
- Services and public utilities;
- Technology development and innovation.

The BOI Announcement No. 2/2557 lays out the quantitative criteria for project approval and foreign shareholding as well as the criteria for granting tax and non-tax incentives that are activity-based and merit-based. Activity-based incentives are granted according to a group classification (A or B) based on the level of importance of the activity (for example, activities in infrastructure development, electricity production, manufacturing, activities using advanced technologies, and so forth). Merit-based incentives are offered based on the merit of the project (for example, R&D, IP acquisitions, advanced tech training, and product design). Tax incentives granted include:

- Full or partial reduction in corporate income tax.
- Import duties exemption and/or reduction for machinery, raw materials, goods imported for R&D and testing purposes, raw materials imported for producing, mixing or assembling goods for export, and goods imported for re-export.
- Export duties exemption for goods produced or assembled by the promoted person.
- Exemption on withholding tax on dividend payment for the profits derived from the promoted business.
The National Competitiveness Enhancement Act for Targeted Industries promotes investments in 10 targeted industries and offers corporate income tax exemption and cash grants for investment in R&D and innovation activities. The tax incentives are the same as those provided under the Investment Promotion Act except the corporate income tax which may be exempted for up to 15 years. The financial incentives are in the form of cash grants to support expenses for investment, R&D, promotion of innovation, or development of technical personnel for the targeted industries.

Similarly, the Eastern Special Development Zone Act targets investments in certain areas in the eastern part of Thailand as special development zones. The targeted industries are the ones provided under the National Competitiveness Enhancement Act such as robotics, aviation, biofuel and the biochemical industries. However, this Act allows the EEC Policy Committee to further specify targeted industries and designate incentives to be granted to business operators in each of the special business promotion zones. The tax incentives include corporate income tax and duty exemption and/or reduction, but not exceeding the incentives provided under the Investment Promotion Act and the National Competitiveness Act for Targeted Industries Act (the subordinate legislations specifying the criteria and conditions are not yet announced).

The Thai Revenue Code also provides incentives such as:

- Value-added tax (VAT) exemptions for certain types of business such as those that sell agricultural products; newspapers, magazines or school books; provision of educational services of public educational institutions, educational institutions under the relevant laws; and provision of domestic transport, and so forth.

- Reduced corporate income tax rates are available for SMEs (with paid-up capital not exceeding B5 million and revenues of not exceeding B30 million, regardless of whether the investors in such SME are Thais or foreigners).

- Exporters exporting at least 70% or 50% of the total sale can apply with the Revenue Department for the good exporter scheme.

There are additional customs privileges under the Customs Act such as duty refund or duty drawback for the goods which are temporarily imported into Thailand and exported out of Thailand within a specific time. Other privileges include the right to obtain a duty refund from the duty paid on imported goods where those goods will have undergone production, mixing, assembling, or packing in Thailand, and then exported out of Thailand.

Incentives are also available to investors under the Thai International Business Center (IBC) Scheme. An IBC is a company registered under the laws of Thailand, performing functions of: (a) providing support services to Thai or foreign affiliates, (b) permitted treasury functions as Treasury Center, or (c) international trading center and providing services related to international trading. The tax incentives may include:

- Reduced corporate income tax rate to 8%, 5%, or 3% based on expenditures in Thailand of B60 million, B300 million, and B600 million, respectively.

- Exemption on corporate income tax for dividend received from an affiliate.

- Exemption on specific business tax for income from a treasury center function.

- Reduced personal income tax rate to 15% for expatriates working for an IBC.

- Exemptions on withholding tax for offshore affiliates receiving dividend or interest paid from an IBC.

There is no readily accessible centralized portal that serves as a repository of all tax and financial incentives available to investors in the country. The relevant authority (for example, BOI, Revenue Department, and the Customs Department) publishes its laws and regulations, including incentive schemes, on its official website. The BOI maintains a database of the companies that are granted investment incentives from the BOI. This database is accessible to the public via BOI’s website.
Eligibility Criteria and Approval Process

All tax and financial incentives granted to investors, both Thai and foreign, are based on eligibility criteria provided in law, regulation or policy. For example, the Investment Promotion Act and relevant notifications of the BOI set out the business activities, conditions and incentives eligible for investment promotion for both foreign and Thai investors. These incentives do not automatically apply. The person who wishes to obtain investment promotion or incentives must submit applications to the relevant authority such as the Office of the BOI or the Revenue Department, and the applications will be reviewed on a case-by-case basis in accordance with the set criteria. However, enterprises who qualify for the preferential corporate tax rate may self-assess and self-declare to make use of the incentive, and the tax department may verify an enterprise’s eligibility after the fact.

6. Investment Linkages

For the purposes of this section, research was focused on availability of incentive schemes to increase local sourcing, technology transfer and measures to improve information exchange between foreign investors and domestic suppliers. Although not specifically intended for foreign investors and equally applicable to domestic enterprises, certain tax benefits are available for qualified technology transfer. In particular, the BOI provides corporate income tax exemptions for investments involving:

- Development of advanced technology training and technical assistance for local suppliers (at least 51% Thai shareholding);
- Advanced technology training.

The BOI has established the BOI Unit for Industrial Linkage Development (BUILD) to help investors coordinate with government agencies, and/or the private sector, including providing support on industrial linkage and sourcing of local suppliers.

In some cases, BOI provides incentives that help with imports and impede local sourcing. The BOI provides import duty exemption for investments involving (i) raw and essential materials imported for use in producing, mixing, or assembling promoted products for export and (ii) machinery that cannot be produced or assembled domestically. Yet, the imported machinery exempt from import duties and import VAT must be approved by the BOI based on certain conditions such as the fact that it cannot be produced or assembled in Thailand in the same quality or quantity of the imported machinery.
For this section, research was focused on whether there are any legal instruments specifically covering outward investment and if there are, whether they impose any restrictions on outward investment. While there is no statutory restriction prohibiting state-owned enterprises from investing abroad, any investment by the state, regardless whether it is international or domestic, requires approval from the Cabinet. Because there is no specific OFDI legislation in the country, private sector OFDI is regulated by the exchange control laws. From Thai exchange control laws perspective, OFDI is generally deemed an outward remittance of money for the purpose of making an investment in or lending to an offshore enterprise that does not operate a business of foreign securities trading. An outward remittance requires Bank of Thailand’s approval unless it relies on a permissible transaction.* OFDI is not automatically deemed a permissible transaction. Rather, to be permissible, OFDI must be for one of the following purposes:

- a. it is a remittance of foreign currency by a juristic person to incorporate or invest in a foreign enterprise which will result in it holding at least 10% of the shares or equities in such foreign enterprise;

- b. it is a remittance of foreign currency to invest in or grant loans to its foreign Related Companies;

- c. it is a remittance of foreign currency for granting loan to a foreign enterprise in a manner other than those listed in (a) and (b), above, in the amount not exceeding US$50 million per year;

- d. it is a remittance of foreign currency by an individual to incorporate or invest in a foreign enterprise which will result in it holding of at least 10% of the shares or equities in such foreign enterprise;

- e. it is a remittance of foreign currency by an individual to grant loan to a foreign entity in (d), above; or

- f. it is a remittance of foreign currency by an individual to invest in or grant loan to a Related Companies of a foreign entity in (d), above.

A Thai entity or individual can rely on the above-mentioned permissible purposes to remit foreign currency so long as they can present supporting documents to the satisfaction of a commercial bank acting as a remitting bank.

* It should be noted that new measures to ease capital flows, including on outward FDI may have been introduced by the Bank of Thailand, that are beyond the period covered in this document.
8. RESPONSIBLE INVESTMENT

For this section, research was focused on whether there are any measures within the country’s investment legislation that are specifically targeted to ensure responsible investment. Thailand has no specific measures on responsible investment in the country’s foreign investment policy and legal framework. It has undertaken several measures in its broader legal framework to preserve the environment, protect health and to ensure products produced comply with national and international standards. In particular, the two main legislations in this regard are the Enhancement and Conservation of National Environment Quality Act B.E. 2535 (1992) and the Factory Act B.E. 2535 (1992).

9. RECENT POLICIES ON NEW TECHNOLOGIES

This section considers Thailand’s recent policy measures on new technologies (that may affect both domestic and foreign investors). Globally, policy measures on new technologies tend to focus on the enabling (sectoral) regulatory framework, as well as on incentives, digital standards, and clusters. At the same time, countries have taken measures that highlight their changing approaches to national security. Other emerging policies that, though not directly related to investment, nevertheless impact investments, are data localization requirements as well as rules and regulations concerning the treatment and use of digitized information.

The National Competitiveness Enhancement Act for Targeted Industries, effective as of February 2017, specifically targets new technologies for attracting investment and enhancing Thai competitiveness. It aims to promote investment in industries new to Thailand or which use new technology. The Act provides tax and non-tax benefits, and establishes a fund with an initial budget of B10 trillion for promoted investments. The “targeted industries” include the following:

- High-value food processing industry;
- Robotics industry;
- Aviation industry;
- Biofuel and biochemical industry;
- Digital industry;
- Medical hub industry;
- National defence industry;
- Industry directly and significantly supporting circular economy—for example, producing fuel from waste, water resource management, and so on.

The Cybersecurity Act, B.E. 2562 (2019) was published in May 2019, and is now effective. The statute is controversial due to concerns around the government’s potentially sweeping access to internet user data.

Data Localization

There are no data localization requirements under Thai law. On May 27, 2019, the Thai government published the Personal Data Protection Act B.E. 2562 (2019) (PDPA) in its official gazette, giving effect to this new law on data privacy. Companies have a 1-year period to bring their practices into compliance by May 27, 2020. The PDPA does not impose any data localization requirements.
Thailand has only national level laws, and no specific laws and regulations exist at the city level. Since in practice many government agencies are located in Bangkok, foreign investors generally have better access to information and materials. For example, the One Start One Stop Investment Center (OSOS) located in Bangkok provides investment-related services and facilitates investments in Thailand by both Thais and foreigners. The OSOS operates as part of the BOI and is a channel to submit documents and obtain advice relating to establishing companies, obtaining “investment promotions” obtaining foreign business licenses, conducting environmental assessments, requesting permission to use land for industrial operations, requesting permission to use utilities, and providing advice on other matters such as funding, banking and financing.

The Investment Promotion Act generally promotes investments on a business activity basis and not on location basis, with the exception of certain underdeveloped areas. Similarly, the Eastern Special Development Zone Act targets investments in certain areas in the eastern part of Thailand as special development zones. These are national level laws, not city specific, and apply to both Thais and foreigners.
11. COMPETITION LAW & POLICY

For the purposes of this section, research was focused on merger control and leniency frameworks in the country.

The primary law governing competition in Thailand is the Trade Competition Act BE 2560 of 2017 (Competition Act) and relevant subordinate legislation. The Competition Act provides two types of restrictive trade practices: restrictive trade practices not eligible for permission and restrictive trade practices eligible for permission. Restrictive trade practices that are not eligible for permission include abuse of dominant position, joint price fixing and certain forms of joint conduct by two or more business operators. Restrictive trade practices that are eligible for permission include mergers that may result in a monopoly or unfair competition, as well as certain other restrictive joint practices.

The Trade and Competition Commission (TCC), established in 2017, is the main body in charge of implementing competition law and policy in the country.

A. Merger Control

Thailand’s merger control regime is primarily governed by the Competition Act and the relevant subordinate legislation, administered by the TCC. Under the Competition Act, a pre-merger filing is required if the merger may result in the creation of either a ‘monopoly’ or ‘a business operator with dominant market power.’ On the other hand, a post-merger notification is required seven days from the date of business merging, if it may result in the ‘substantial lessening of competition in a market.’ It should be noted that other sectoral regulations may also include merger rules applied by the respective regulators such as the Bank of Thailand, Energy Commission or the Broadcasting and Telecom Commission. In this regard businesses that are specifically regulated under other sectoral laws having jurisdiction over competition matters will fall outside the scope of the law.

A merger is defined to include the following:

- Merger between a manufacturer and another manufacturer, a distributor and another distributor, a manufacturer and a distributor, or between a service supplier and another service supplier, which results in the continuity of one business and the termination of the other business, or the creation of a new business;
- Purchase of the whole or part of assets of another business in order to have control over its policies on business administration, administration or management, pursuant to the criteria prescribed by the TCC; or
- Purchase of the whole or part of the shares of another business whether directly or indirectly in order to have control over its policies on business administration, administration or management, pursuant to the criteria prescribed by the TCC.

“Control” is understood to mean acquisition of at least 25% of the voting rights of a publicly listed company and exceeding 50% of the voting rights of a non-listed company, while in asset acquisition it means acquiring assets exceeding 50% of the total value of assets used in the ordinary course of business of the seller.

The definition does not address joint ventures (JVs), thus our understanding is that JVs may trigger a notification only if they fall under one of the above situations for example, JV via assets or share acquisition.

Further definitions apply depending on the type of filing that is required. For purposes of pre-merger filing, ‘a monopoly’ is defined as a situation where there is only one business operator in any market possessing absolute power to determine price and supply of products or service freely; and such business operator has a sales turnover of at least B1 billion. A ‘business operator with dominant market power’ is defined as (i) any business operator having a market share of 50% or more and having a
sales turnover of at least B1 billion in the previous year; or (ii) any of the top three business operators that together have an aggregate market share of 75% or more and a sales turnover of at least B1 billion in the previous year (excluding any business operator having a market share in the previous year of lower than 10% or having a sales turnover in the previous year of lower than B1 billion). For post-merger notification, the threshold is a merger in which the sales turnover of any one business operator, or of all relevant business operators undertaking a merger in any market, amounts to B1 billion or more and that does not result in a ‘monopoly’ or result in a ‘business operator with dominant market power’.

A merger by a business operator falls within the ambit of the Competition Act if that business operator engages in business activities or commerce in Thailand. If a foreign legal entity has a ‘business presence’ in Thailand (that is, it operates a business in Thailand through a branch office or a subsidiary), it would be subject to the application of the Competition Act.

Mergers implemented for the purpose of internal restructuring or reorganization of business operators having relationship in terms of policy direction or control pursuant to the criteria prescribed by the TCC, are not subject to the merger notification requirements.

**Pre-notification Meetings**

The Competition Act does not specify a process for merging parties to have pre-notification meetings with the TCC on merger control matters (unlike several other matters such as abuse of dominant positions, unfair trade practices where formal pre-consultation is expressly provided for). However, business operators may request an unofficial pre-notification meeting with the TCC to discuss the applicable merger control processes and initial assessment of TCC.

**Fast Track Procedure and Information Requests**

No fast track procedure is available under the Competition Act.

The law does not contain any specific provisions addressing information requests from the TCC. It merely specifies that the TCC must complete its review of the pre-merger application within 90 days from the date the TCC receives the application (with an extension of not more than 15 days, if necessary).

**Remedies**

The merger parties can propose commitments to limit anticompetitive effects of mergers and the TCC can approve a merger within a specific time period and under conditions. The law does not address the type of commitments, but it is expected that both structural and behavioral remedies can be included.

**File Access and Third Part Intervention**

Although parties cannot access the TCC’s merger files, if the TCC does not approve a merger, it is required to state the reasons for the non-approval, both the factual circumstances and legal rationale. The Competition Act prohibits any person (including the TCC) from disclosing confidential information about the business or business operation acquired or known as a result of compliance with the Competition Act, unless the disclosure is necessary for performing the TCC’s duties or for the purposes of investigation, lawsuits, or reaching decisions.

Although the Competition Act does not contain any provisions expressly permitting a third party to participate in the merger procedures, in practice it is possible for a third party to file a complaint to the TCC if the proposed transaction adversely affects their interests. The TCC is also empowered to solicit inputs from third parties affected by the proposed transaction during the merger approval process.

**Substantive Assessment**

The TCC will consider the following factors in its substantive assessment of a merger:

- An analysis of the market structure before and after the merger of businesses.
- Relevant market.
- Market share of the merger parties before and after the merger of businesses.
- Total sales volume of the merger parties of the businesses before and after the merger.
- Assessment of impacts on competition after the merger of businesses in the following aspects:
  - Concentration in the market.
  - Entering into the market of new business operators and expansion of production of competitors in the market, by taking into consideration various factors, such as laws and regulations, costs of transportation, access to old technology patents, access to raw materials or other necessary production articles, and so forth.
  - Non-coordinated effect, which refers to an effect caused by the merged entity that may make increasing profits from the increasing of prices or the reduction of quality of goods owing to reduced competition.
  - Coordinated effect, which refers to an effect arising from the merger of businesses that may increase the possibility of the business operators cooperating with each other to increase the price of goods after the merger of their businesses.
  - Effect on the benefits economically and on the consumers as a whole.
  - Other effects that may affect the competition in the market (if any).

**Penalties and Appeals**

**Different types of penalties may be imposed.** Penalties for failure to notify mergers that may significantly lessen the competition in a market would result in a fine of not more than B200,000 and a daily fine of not more than B10,000 per day until the merger is notified. Penalties for implementing a merger that may result in a monopoly or a dominant business operator in the market without pre-merger approval would result in a fine of not more than 0.5% of the transaction value, and the TCC has the authority to unwind the transaction. Penalties for failure to comply with the TCC’s order in this regard would result in a fine of not more than B6 million and a daily fine of not more than B300,000 per day throughout the period of violation.

**If the merger parties do not agree with the TCC’s decision, they have the right to appeal to the Administrative Court within 60 days.** An appeal of a decision of the Administrative Court may be made to the Supreme Administrative Court, whose decision will be final.

**Publicity and Deadlines for Merger Decisions**

The merger decisions are not published or publicly available.

The TCC is mandated to issue merger decisions within ninety calendar days from the date of the application, extendable by a maximum of fifteen calendar days.

**B. Leniency Program**

There is currently no leniency program in Thailand.
The WTO services sectoral classification list (W/120) is a comprehensive list of services sectors and sub-sectors covered under the GATS. It was compiled by the WTO in July 1991 and its purpose was to facilitate the Uruguay Round negotiations, ensuring cross-country comparability and consistency of the commitments undertaken. The 160 sub-sectors are defined as aggregate of the more detailed categories contained in the United Nations provisional Central Product Classification (CPC). The list can be accessed under the following link: http://www.wto.org/english/tratop_e/serv_e/mtn_gns_w_120_e.doc.

Services are categorized into 12 sectors:
1. Business services
2. Communication services
3. Construction and related engineering services
4. Distribution services
5. Educational services
6. Environmental services
7. Financial services
8. Health related and social services
9. Tourism and travel related services
10. Recreational, cultural and sporting services
11. Transport services
12. Other services not included elsewhere
For the purpose of this research, 32 sectors have been identified. This is not an exhaustive list of all sectors of the economy.

<table>
<thead>
<tr>
<th>Primary:</th>
<th>Services:</th>
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<tbody>
<tr>
<td>1. Agriculture, Hunting, Forestry, and Fishing</td>
<td>18. Electricity, Gas, and Water</td>
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<tr>
<td><strong>Manufacturing:</strong></td>
<td>20. Construction</td>
</tr>
<tr>
<td>3. Agroprocessing, Food Products, and Beverages</td>
<td>21. Wholesale and Retail Trade</td>
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<tr>
<td>4. Textiles, Apparel, and Leather</td>
<td>22. Hotels and Restaurants</td>
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<tr>
<td>5. Chemicals and Chemical Products</td>
<td>23. Other Travel and Tourism-related Services</td>
</tr>
<tr>
<td>8. Pharmaceuticals, Biotechnology, and Medical Devices</td>
<td>26. Computer and Software Services</td>
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<tr>
<td>9. Metals and metal products</td>
<td>27. Financial Services including Insurance</td>
</tr>
<tr>
<td>11. Wood and wood products (other than Furniture)</td>
<td>29. Business Services</td>
</tr>
<tr>
<td>12. Furniture</td>
<td>30. Professional, Scientific and Technical Services (Engineering,</td>
</tr>
<tr>
<td>13. Paper and paper products</td>
<td>Architecture, and so on.)</td>
</tr>
<tr>
<td>14. Printing and publishing</td>
<td>31. Health Services</td>
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<tr>
<td>15. Automobiles, Other Motor Vehicles, and Transport Equipment</td>
<td>32. Media and Entertainment</td>
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<tr>
<td>16. Information Technology and Telecommunications Equipment</td>
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<tr>
<td>17. Machinery and Electrical and Electronic Equipment and Components</td>
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This Investment Policy and Regulatory Review presents information on the legal and regulatory frameworks governing foreign direct investment and competition that affect businesses and foreign investors. Since legal and regulatory frameworks are constantly evolving, a cut-off date was set for the research. This country review therefore covers information available as of May 31, 2019, unless otherwise indicated in the review. IPRRs are available for the following middle-income countries: Brazil, China, India, Indonesia, Malaysia, Mexico, Nigeria, Thailand, Turkey, and Vietnam.