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OECD Investment Policy Reviews: Thailand

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Preface

Thailand has had a remarkable economic development trajectory over the past 60 years and foreign direct investment (FDI) has been pivotal in this success. A pioneer in building its development strategy around FDI and integration in global value chains, Thailand is now a net outward investor, with rapidly growing presence in neighbouring countries. Its success in investment attraction was enabled by a combination of its early liberalisation of inward FDI for the manufacturing sector, on the one hand, and proactive investment promotion and facilitation policies under a strong Board of Investment, on the other.

Along with economic growth and integration into the global economy, Thailand has also made considerable strides in the area of inclusive and sustainable development. Poverty rates have dropped to less than 10% of the population. Efforts to improve the quality of education and to equip the workforce with skills that meet the emerging needs of the services economy are starting to bear fruit. While challenges remain in some areas of responsible business conduct (RBC), there is strong political will to address them. A regional leader in RBC; Thailand became the first country in Asia to adopt a standalone National Action Plan on Business and Human Rights in 2019.

Thailand aspires to transition from upper middle-income to high-income economy by 2037, as outlined in its 20-year national strategy. The government aims to achieve this objective by upgrading to a value-based green economy, as made evident by the recently introduced Thailand 4.0 vision and Bio-Circular-Green (BCG) economy model. This ambitious plan relies heavily on inward FDI and will therefore require a continued and concerted effort to reform and improve the investment climate. New challenges related to the ongoing COVID-19 pandemic could delay progress toward this objective, as the crisis interrupts Thailand's long period of growth. The economy is predicted to contract by approximately 7% in 2020, and exports and FDI are likely to decline even more.

This first *OECD Investment Policy Review of Thailand* identifies potential priority areas for investment climate reform in support of a green, inclusive and sustainable recovery from the COVID-19 crisis, and the fulfilment of Thailand's development ambitions. It covers recommendations for improving the domestic and international legal framework for investment, suggestions for institutional reforms as well as directions for implementing policy frameworks in the area of RBC and green growth. The Government of Thailand and the OECD are very pleased to have joined forces in producing this *OECD Investment Policy Review of Thailand*, as part of the OECD-Thailand Country Programme. This report is one of the deliverables of this Country Programme.

We thank all government agencies in Thailand and the OECD Secretariat who have contributed to this Review. We hope it will help improve the investment climate in Thailand, and the achievement of its sustainable development goals.

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Foreword

This *OECD Investment Policy Review of Thailand* uses the OECD Policy Framework for Investment to present an assessment of the investment climate in Thailand and to discuss reform opportunities that support Thailand's development ambitions and contribute to the Sustainable Development Goals (SDGs). After describing Thailand's development path and future development strategies, the Review provides a snapshot on Thailand's competitive edge to identify where challenges may lie and policy efforts are needed. It further studies trends and qualities of FDI and discusses how investment contributes to Thailand's inclusive and sustainable development. The Review examines a broad range of policy areas including investment promotion and facilitation, the domestic and international legal framework for investment, policies to promote and enable responsible business conduct and green growth, and efforts to promote outward foreign direct investment. While the global COVID-19 crisis could slow the speed of progress towards Thailand's ambitions, policy recommendations provided in this Review should be considered as possible investment climate reform priorities for an inclusive and sustainable recovery.

The Review was prepared in close collaboration with the Ministry of Foreign Affairs of the Kingdom of Thailand (MFA), in consultation with an inter-ministerial taskforce created for the Review. The Review has also benefited from consultations with OECD Investment Committee Delegates, representatives from OECD country embassies in Thailand as well as stakeholders from international organisations, the private sector, civil society and academia. The Review is implemented as part of the OECD-Thailand Country Programme.

The Review was prepared by Martin Wermelinger, Fares Al Hussami, Alessandra Celani, Fernando Mistura, Letizia Montinari, and Baxter Roberts from the Investment Division, and Naeeda Crishna Morgado, external consultant, under the overall guidance of Stephen Thomsen, Head of Investment Policy Reviews. The RBC chapter was authored by Tihana Bule from the OECD Centre for Responsible Business Conduct as part of the broader project on Responsible Supply Chains in Asia funded by the European Union. Silvia Appelt from the Directorate for Science, Technology and Innovation provided substantive inputs. Edward Smiley helped prepare the report for publication. Angèle N'Zinga provided administrative assistance. Secretariat comments were received from Ana Novik, Head of Investment Division, David Gaukrodger, Senior Legal Advisor, and Alexander Böhmer, Malory Greene, and Tiyarat Niamkohphet-Cader of OECD Global Relations.

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Acronyms and abbreviations

AANZFTA	ASEAN-Australia-New Zealand Free Trade Agreement
ACIA	ASEAN Comprehensive Investment Agreement
AEC	ASEAN Economic Community
AEDP	Alternative Energy Development Plan
APEC	Asia-Pacific Economic Community
AMS	ASEAN Member State
ASEAN	Association of Southeast Asian Nations
ARC	Announcement of the Revolutionary Council
BAU	Business As Usual
BIT	Bilateral Investment Treaty
BMA	Bangkok Metropolitan Area
BCG	Bio Circular Green
BOI	Board of Investment
BUILD	Industrial Linkages Development Division
CAGR	Compound Annual Growth Rate
CBD	Convention on Biological Diversity
CDM	Clean Development Mechanism
CIT	Corporate Income Tax
CLMV	Cambodia, Lao PDR, Myanmar, and Viet Nam
CO_2	Carbon Dioxide
COPTICS	Centre of Operational Policing for Thailand Against Intellectual Property Violations and Crimes on the Internet Suppression
COVID-19	Novel coronavirus; official name SARS-CoV-2
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
DIP	Department of Intellectual Property
DITP	Department of International Trade Promotion
EEC	Eastern Economic Corridor
EECi	Eastern Economic Corridor Innovation Hub
EIA	Environmental Impact Assessments
EHIA	Environment and Health Impact Assessments

EPO	European Patent Office
EU	European Union
ESG	Environmental, Social, Governance
EQMP	Environment Quality Management Plans
EXIM Thailand	Export Import Bank of Thailand
FBA	Foreign Business Act
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GDP	Gross Domestic Product
GPF	Government Pension Fund
GVC	Global Value Chain
ICT	Information and Communication Technology
IIA	International Investment Agreement
ILO	International Labour Organisation
IMF	International Monetary Fund
IP	Intellectual Property
IPA	Investment Promotion Agency
IPD	Board of Investment's Investment Promotion Division
ISDS	Investor State Dispute Settlement
ISIC	International Standard Industrial Classification
JICA	Japanese International Cooperation Agency
JSCCIB	Joint Steering Committee on Commerce, Industry, and Banking
LAC	Latin America and Caribbean
MENA	Middle East and North Africa
M&A	Merger and Acquisition
MHESI	Ministry of Higher Education, Science, Research and Innovation
MNE	Multinational Enterprise
NAP	National Action Plan on Business and Human Rights
NEQA	Natural Environment Quality Act
NDC	Nationally Determined Contribution
NESDC	National Economic and Social Development Council
NHRCT	National Human Rights Commission of Thailand
NSTDA	National Science and Technology Development Agency
OECD	Organisation for Economic Co-operation and Development
OFDI	Outward Foreign Direct Investment
OSMEP	Office of Small and Medium Enterprises Promotion
OSOS	On Start One Stop Investment Centre
OVEC	Vocational Education Commission

PDP	Power Development Plan
PFI	Policy Framework for Investment
PRI	Principles for Responsible Investment
RBC	Responsible Business Conduct
RCA	Revealed Comparative Advantage
R&D	Research and Development
RCEP	Regional Economic Comprehensive Partnership
SDG	Sustainable Development Goals
SEA	Strategic Environmental Assessment
SEC	Securities and Exchange Commission
SET	Stock Exchange of Thailand
SEZ	Special Economic Zone
SOE	State-owned Enterprise
SME	Small and Medium Enterprise
STEM	Science, Technology, Engineering and Mathematics
STC	Strategic Talent Centre
NXPO	Office of National Higher Education, Science, Research and Innovation Policy Council
TAI	Thai Arbitration Institute
TBA	Thai Bankers Association
TGO	Thailand Greenhouse Gas Management Organisation
THAC	Thailand Arbitration Centre
THB	Thai Baht
TRIPS	Trade-Related Aspects of Intellectual Property Rights
T-VET	Thailand Voluntary Emission Trading Scheme
UN	United Nations
USD	United States Dollar
USPTO	United States Patent and Trademark Office
UNFCCC	United Nations Framework Convention on Climate Change
WEF	World Economic Forum
WIPO	World Intellectual Property Organisation
WWF	World Wildlife Fund
WTO	World Trade Organisation

Executive Summary

Thailand has had an impressive economic development trajectory over the past decades. Foreign direct investment (FDI) and integration in global value chains (GVCs) have been important enablers of this success. Inward FDI's share in GDP has increased to above 50% today. The emerging global economic crisis related to the COVID-19 pandemic is expected to bring this long period of growth to a sudden halt. According to the OECD, the economy is predicted to contract by approximately 7% in 2020, where exports and FDI are likely to slow even more. Thailand's past experience of severe floods in 2011, which also resulted in a sudden – but only temporary – interruption of GVC networks, provides some hope that Thailand's GVC integration is quite resilient.

Progress in the area of inclusive and sustainable development is ongoing, with poverty rates dropping to less than 10%, but challenges remain. Although access to basic education at primary and secondary levels is universal, there is a need to address the quality of education being provided. In particular, higher and vocational education needs to equip the workforce with skills required by the industry and the emerging needs of the services economy. Pressures remain in some areas of responsible business conduct (RBC), but are now being addressed with determination. Rapid economic growth in Thailand has also led to significant use of natural resources, resulting in rising environmental challenges.

Thailand aspires to graduate from an upper middle-income to a high-income country by 2037, along with inclusive and sustainable development, as outlined in the 20-year national strategy. With its recently introduced Thailand 4.0 vision and the Bio-Circular-Green (BCG) economy model, the government would like to achieve its objectives through economic upgrading toward a value-based and green economy.

Investment promotion and facilitation policy under the Board of Investment (BOI) has an impressive record in stimulating foreign and domestic investments. The 2015-21 investment promotion strategy includes novelties, such as a shift toward more targeted and merit-based incentives for R&D and skills development and a reduction of activities eligible for promotion. The incentive scheme could however be further streamlined, simplified and made increasingly merit-based so that all firms, including SMEs, can compete on a more equal basis. Besides investment promotion, the BOI engages in non-tax concessions such as providing eased restrictions on foreign shareholdings and expatriate workers. This could affect its efficacy and credibility as the BOI has to represent investors' interests in policymaking while regulating them at the same time. Streamlining the wider institutional framework for the entry of foreign investors and workers could be a longer term reform priority, potentially liberating the BOI from regulatory mandates.

With the creation of the Foreign Business Act (FBA) in 1999, Thailand was early in opening up to foreign investment in manufacturing, but has not liberalised further since then. Thailand's primary and services sectors remain particularly restrictive to foreign investment, according to the OECD FDI Regulatory Restrictiveness Index. The development of competitive services has great potential to promote inclusive growth and productivity including in manufacturing; liberalising services should therefore be envisaged. Meanwhile, some foreign investors have found ways into restricted activities by exploiting legal loopholes, such as preferential shares and indirect ownership. The resulting policy inconsistency and uncertainty are likely to come at a cost for investors, and resolving them should be prioritised in future reforms.

Thailand has made important reform strides in terms of its domestic legal framework to facilitate investments into knowledge assets; namely with respect to IP protection and cyber security. The implementation of these efforts should be prioritised in the short-to-medium-term, while broader reforms to align investment protection into a single law and removing restrictions to land ownership for foreigners could be longer term priorities.

Reviewing Thailand's investment treaties indicates that Thailand, like many other countries, has a significant number of older-style investment treaties with vague investment protections that may create unintended consequences. Where treaties set forth vague provisions, arbitrators deciding investment disputes have had wide discretion to interpret the scope of protection which has generated inconsistencies and uncertainty. The Thai government is well aware of these challenges. It plans to start the process of seeking to update existing older-style BITs with treaty partners once its new model BIT is finalised later in 2020. Experiences with the COVID-19 pandemic may further shape how the government views key treaty provisions or interpretations and how they assess the appropriate balance in investment treaties.

Promoting and enabling responsible business conduct (RBC) is of central interest to policy-makers wishing to attract and keep investment and ensure that business activity contributes to broader value creation and sustainable development. Thailand is a regional leader on RBC; it became the first country in Asia to adopt a standalone National Action Plan (NAP) on Business and Human Rights (2019-2022). While the efforts by the Thai government to set RBC policy direction are commendable, the real test will be in implementation. Building on the support for the NAP and the swell of support for RBC, Thailand is in a unique position to promote bold and consistent implementation of RBC principles and standards across the economy.

Thailand's vision of transitioning into a resilient, innovation and technology driven economy will not be achievable without significant progress towards green growth, especially in a post- COVID context. Recognising these challenges, Thailand has made strides in developing a comprehensive and consistent policy framework for green growth and environment and in promoting green investment. The BCG economy model puts green growth related concepts at the heart of continued development. Priority should be on implementing and strengthening the policies on green growth that are in place and ensuring that environmental objectives are systematically integrated across Thailand's broader policy framework for investment.

Outward foreign direct investment (OFDI) has become an important pillar of Thailand's economy; outward flows have surpassed inward flows in recent years. OFDI can increase Thailand's competitiveness and is central for long-term growth, GVC integration and sustainable development. OFDI is a strategic priority in Thailand's National Economic and Social Development Plan (2017-21). While Thailand's current institutional and policy setup is likely to enable further OFDI growth, policy considerations could focus on better inter-agency coordination and targeted policy packages to promote relocation of labour-intensive activities that are no longer competitive in Thailand, on the one hand, and acquiring brands, knowledge as well as new technologies and innovation capacity, on the other hand.

While the COVID-19 crisis could slow the speed of progress towards Thailand's ambitions, policy recommendations provided in this Review provide potential priority areas for investment climate reform in support of an inclusive and sustainable recovery.

1 Assessment and recommendations

The Investment Policy Review provides an overview of Thailand's development path and future development strategies, a snapshot of the current competitive edge and an assessment of trends and qualities of foreign direct investment. It provides recommendations on investment promotion and facilitation policies (including inward and outward investment), the domestic and international legal framework for investment and on the promotion of responsible business conduct and investment for green growth. This chapter summarises the main findings and recommendations of the Investment Policy Review.

Thailand's strategy for the future and focus of this Review

Thailand has had an impressive economic development trajectory over the past decades, with annual growth rates at around 8% before the Asian Financial Crisis, and more moderate growth since then. Incomes have been increasing rapidly throughout the past half century due to rapid demographic transition, moving agricultural workers into manufacturing. Thailand joined the group of upper middle-income countries in the early 2010s. Foreign direct investment (FDI) and integration in global value chains have been key in Thailand's development process. Inward FDI's share in GDP increased to 50% by 2017. More recently, outward investments have become an important pillar in Thailand's upgrading in global and regional value chains. The emerging global economic crisis related to the COVID-19 pandemic is expected to bring this long period of growth to a sudden halt. The economy is predicted to contract by approximately 7% in 2020, where exports and FDI are expected to slow even more.

Progress in the area of inclusive and sustainable development is ongoing but challenges remain. Poverty rates have dropped to less than 10%. Although access to basic education at primary and secondary levels is universal, there is a need to address the quality of education being provided. In particular, higher and vocational education needs to equip the workforce with skills required by the industry and the emerging needs of the services economy. Pressures remain in some areas of responsible business conduct (RBC), including with respect to human trafficking and forced labour, but are now being addressed with determination. Rapid economic growth in Thailand has also led to significant use of natural resources, resulting in rising environmental challenges.

Thailand's ambition for inclusive and sustainable development

Thailand aspires to graduate from an upper middle-income to a high-income country by 2037, along with improved security and inclusive and sustainable development, as outlined in the 20-year national strategy (2018-37). With its recently introduced Thailand 4.0 vision, the government would like to achieve its 20-year strategy through economic upgrading toward a value-based, innovation-driven economy away from the production of commodities and low value added manufacturing.

Thailand's vision will not be achievable without progress towards environmental sustainability and socially inclusive growth benefiting all parts of society and all regions. This is consistent with Thailand's long-standing 'Sufficiency Economy Philosophy' prioritising economic self-reliance for all. Thailand therefore introduced the Bio-Circular-Green (BCG) economy model in 2019, involving a strategy and reform agenda on how to achieve the Thailand 4.0 vision and long-term objectives related to the Sustainable Development Goals (SDGs). While the COVID-19 crisis is likely to slow the speed of progress towards Thailand's ambitions, the focus on an inclusive and sustainable development pathway needs to be upheld during the crisis as well as its recovery. The role of the private sector is critical in this regard. Evidence has already shown that responsible companies have been more resilient during the crisis. As governments are designing recovery policies, they are well-positioned to promote responsible business conduct standards and tools. RBC can help governments and companies make decisions that balance environmental, social and governance issues in the crisis, while ensuring that such responses do not create further risks to people, planet and society – or contribute to further destabilising supply chains down the line.

Focus of this Investment Policy Review

Guidance on how to embed these efforts in the broader policy and institutional landscape is of key interest in this Investment Policy Review. It reviews investment climate reform opportunities that support Thailand's development and contribute to the SDGs, relying on the Policy Framework for Investment (Box 1) which is a tool developed at the OECD to help governments address investment climate challenges. The Review has been conducted by the OECD in close co-ordination with the Ministry of Foreign Affairs of Thailand and implemented as part of the OECD-Thailand Country Programme. It was supported by an inter-agency taskforce including various Thai government agencies. While the bulk of the Review was prepared before the COVID-19 outbreak, possible economic and sustainability implications of the emerging crisis are reflected across chapters. Policy recommendations provided in the Review should be considered as possible reform priorities for the investment climate to enable an inclusive and sustainable recovery in Thailand. Thailand could also consider making an official request to adhere to the OECD *Declaration on International Investment and Multinational Enterprises*, which would involve an OECD-assisted process building on the work already undertaken in this Review.

After further elaborating on Thailand's development path and future development strategies (Chapter 2), the Review provides a snapshot on the current competitive edge with a particular focus on competitiveness in manufacturing activities and services, targeted under Thailand 4.0 and the Board of Investment's (BOI's) investment promotion policy, as well as on innovation capacity and skills (Chapter 3). This assessment helps identify where challenges may lie and policy efforts are needed. Chapter 4 studies trends and qualities of FDI and discusses how investment contributes to Thailand's inclusive and sustainable development, aligned with Thailand 4.0 and the SDGs.

Chapter 5 focuses on investment promotion and facilitation. It describes the institutional framework and strategy for promotion and highlights related outcomes. Based on the experience of OECD and other countries, the chapter looks at how to attract FDI in high-technology and R&D sectors, including attraction of foreign talent that may currently be insufficient in Thailand. Chapter 6 focuses on the foreign investment regime, particularly restrictions to FDI in services and possible reform opportunities of the Foreign Business Act (FBA) that would enable a greater contribution of investment to Thailand 4.0 ambitions. Chapter 7 discusses the broader legal framework for investment. Intellectual property rights protection and contract enforcement are at the centre of discussion, given their key role for developing higher value added activities. Relatedly, Chapter 8 describes Thailand's investment treaty practice and presents opportunities for alignment with modern practices.

The subsequent chapters focus on RBC (Chapter 9) and the role of investment for green growth (Chapter 10). The chapter on RBC reflects Thailand's achievements towards promoting more responsible business practices, including state actions and frameworks that have been put in place for that purpose. It provides recommendations on how promoting RBC is a strategic choice for upgrading in global supply chains while also enabling policy coherence and encouraging the private sector's contribution to the SDGs. This will become even more critical in a post-COVID world. Chapter 10 describes the policy framework for green growth and climate change in Thailand and points to significant challenges with respect to policy coherence and implementation.

With economic development, Thailand has become an important investor abroad. This can improve efficiency by moving activities in which Thailand no longer has a comparative advantage to neighbouring countries and help knowledge acquisition by investing in foreign technologies. Chapter 11 presents outward investment trends, points to opportunities and risks and suggests directions for policy.

This assessment chapter provides a synthesis of main findings and recommendations of this Investment Policy Review. For each policy reform area, a prioritisation of possible policy options is proposed. Short- and medium term policy priorities could typically be addressed unilaterally by concerned government agencies, while long-term priorities may involve coordination and action of several agencies, and could imply changes in the legal framework itself. Long-term policy considerations may be initiated immediately but could be delivered over a time horizon of several years.

Box 1.1. The Policy Framework for Investment

The Policy Framework for Investment (PFI) helps governments to mobilise private investment in support of sustainable development, thus contributing to the prosperity of countries and their citizens and to the fight against poverty. It offers a list of key questions to be examined by any government seeking to create a favourable investment climate. The PFI was first developed in 2006 by representatives of 60 OECD and non-OECD governments in association with business, labour, civil society and other international organisations and endorsed by OECD ministers. Designed by governments to support international investment policy dialogue, co-operation, and reform, it has been extensively used by over 30 countries as well as regional bodies to assess and reform the investment climate. The PFI was updated in 2015 to take this experience and changes in the global economic landscape into account.

The PFI is a flexible instrument that allows countries to evaluate their progress and to identify priorities for action in 12 policy areas: investment policy; investment promotion and facilitation; trade; competition; tax; corporate governance; promoting responsible business conduct; human resource development; infrastructure; financing investment; public governance; and investment in support of green growth. Three principles apply throughout the PFI: policy coherence, transparency in policy formulation and implementation, and regular evaluation of the impact of existing and proposed policies.

The value added of the PFI is in bringing together the different policy strands and stressing the overarching issue of governance. The aim is not to break new ground in individual policy areas but to tie them together to ensure policy coherence. It does not provide ready-made reform agendas but rather helps to improve the effectiveness of any reforms that are ultimately undertaken. By encouraging a structured process for formulating and implementing policies at all levels of government, the PFI can be used in various ways and for various purposes by different constituencies, including for self-evaluation and reform design by governments and for peer reviews in regional or multilateral discussions.

The PFI looks at the investment climate from a broad perspective. It is not just about increasing investment but about maximising the economic and social returns. Quality matters as much as the quantity as far as investment in concerned. It also recognises that a good investment climate should be good for all firms – foreign and domestic, large and small. The objective of a good investment climate is also to improve the flexibility of the economy to respond to new opportunities as they arise – allowing productive firms to expand and uncompetitive ones (including state-owned enterprises) to close. The government needs to be nimble: responsive to the needs of firms and other stakeholders through systematic public consultation and able to change course quickly when a given policy fails to meet its objectives. It should also create a champion for reform within the government itself. Most importantly, it needs to ensure that the investment climate supports sustainable and inclusive development.

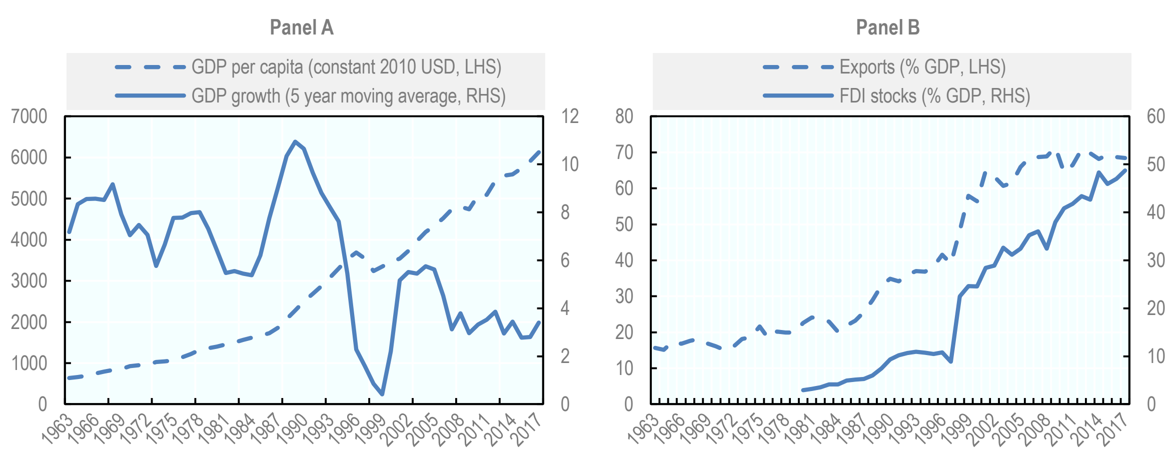
The PFI was created in response to this complexity, fostering a flexible, whole-of-government approach which recognises that investment climate improvements require not just policy reform but also changes in the way governments go about their business.

For more information on the Policy Framework for Investment, see:
http://www.oecd.org/investment/pfi.htm.

Thailand's development trajectory

Thailand experienced rapid growth, at an annual rate of around 8%, before the Asian Financial Crisis in 1997. It recovered quickly from the 1997 crisis but economic expansion has remained more modest ever since. Despite slower growth in recent decades, per capita incomes have continued increasing due to rapid demographic transition, moving agricultural workers into manufacturing (Figure 1.1, Panel A). Thailand joined the group of upper middle-income countries in the early 2010s. Nonetheless, one-third of the population is still involved in agriculture and it remains important to ensure that an agrarian population, already the lowest income sector in the country, does not get left further behind. Their function remains important for the Thai economy, not least for food security. The emerging global economic crisis related to the COVID-19 pandemic is expected to bring Thailand's long period of growth to a sudden halt. The economy is predicted to contract by approximately 7% in 2020, where exports and FDI are expected to slow even more.

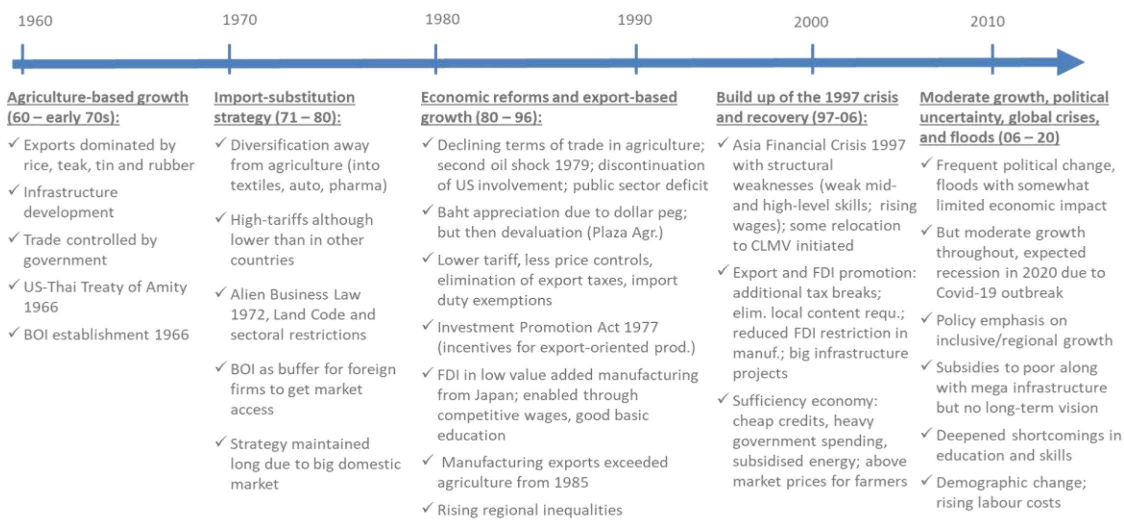
Figure 1.1. Thailand's strong economic growth has been enabled by exports and FDI



Source: OECD based on World Development Indicators.

Embedded in 5-year development plans since the early 1960s, Thailand's macroeconomic policy has been relatively stable over the past decades despite frequent changes in government (Figure 1.2). Thailand followed a development model like many in Asia and elsewhere, involving a long-term structural shift from agriculture to industry. The shift from an import substitution policy to greater emphasis on export promotion was essential for the rapid growth of manufacturing production and exports. Nonetheless, the export boom came slightly later with more favourable exchange rate policies and an investor-friendly industrial policy. More recent development policies have emphasised inclusive and sustainable growth, but challenges remain particularly in light of the emerging global crisis due to the COVID-19 outbreak. Responding to the crisis, the government has introduced strong measures to address economic challenges for individuals, businesses and the economy more broadly, which total approximately 15% of GDP – among the highest in Asia.

Figure 1.2. Thailand's development trajectory: 1960-today



Source: Based on OECD research (see Chapter 2).

Foreign investment has been key in Thailand's development and integration in global value chains

FDI has played a key role in Thailand's industrialisation process and integration in GVCs. FDI in Thailand was dominated in the early period by US investors, but over the 1980s, Japanese foreign investment exceeded threefold that from the United States. Foreign investment in the automobile, electronics and textile sectors enabled rising exports, while some of these investments involved assembly of imported components for domestic sale. Inward FDI's share in GDP increased to 50% by 2017 (Figure 1, Panel B). Investment is still dominated by Japanese manufacturing investors, but with rising shares of other investors from both within the ASEAN region, mostly Singapore, as well as outside, for example China and Europe.

As a share of ASEAN, however, both FDI stocks and flows have fallen steadily over the past two decades (Chapter 4). This is partly explained by growing investments in neighbouring Cambodia, Lao PDR, Myanmar and Viet Nam (CLMV). The CLMV region has become an attractive destination for some investors, due to their low-cost labour and improving investment and trade regimes, including related to preferential import tariffs in the European Union and the United States.

Investments abroad have increased rapidly over the past decade, including in CLMV (Chapter 11). Thailand is the second largest investor in terms of outward FDI (OFDI) stock in ASEAN, surpassing Malaysia in 2018. Outward investments have become an important pillar in the economy, with OFDI stocks as a share of GDP reaching 25% in 2018. Annual growth of OFDI has surpassed that of inward FDI in recent years. Thai enterprises are venturing into neighbouring ASEAN markets and increasingly beyond regional markets, driven by slower domestic market growth, rising labour costs and export market access.

Trade and investment in global value chains (GVCs) have come to a sudden halt in many sectors as a result of the COVID-19 outbreak. Thai exports may fall by as much as USD 22 billion in 2020, with the biggest impacts on exports of manufacturing goods and (travel) services. Likewise, FDI is set to fall in 2020 by more than 30% globally and is likely to affect developing countries, including Thailand, relatively more given their exposure to crisis-affected manufacturing sectors. Cross-border M&A deals and announced greenfield FDI in Thailand have dropped considerably in the first months of 2020 compared to the previous years (Chapter 4). With almost the whole world having entered full or partial lockdown in March, the downward trend is likely to have magnified since then. Thailand's past experience of severe floods in 2011, which also resulted in a sudden supply shock and interruption of GVC networks, may provide some hope that Thailand's GVC integration is quite resilient. GVCs remained in place and operations of many foreign firms expanded soon after the floods in 2011. Going forward, it will be important to promote and enable responsible business conduct by companies participating in GVCs considering the increased attention being given to environmental and social impacts in GVCs.

Progress toward inclusive and sustainable development continues but challenges remain

Economic development has also brought some social progress to Thailand. Poverty rates, measured against the national poverty line, have decreased considerably from around 60% in 1990 to 7% today. Although access to basic education at primary and secondary levels is universal, there is a need to address the quality of education being provided. In particular, higher and vocational education needs to equip the workforce with skills required by the industry and the emerging needs of the services economy. The government has reinforced its efforts to address the skills and innovation capacity challenge over recent years (Chapter 3).

Social pressures remain significant, particularly in poorer regions, where precarious employment conditions are prevalent, despite some improvements over the past decades. As the labour market tightened in the early 1990s, the borders were implicitly opened to admit labour migrants from neighbouring countries, mostly Myanmar. Today, almost 10% of the labour force or 3.5 million are low-skilled migrant workers employed predominately in agriculture, fishing, construction, domestic services, manufacturing and retail. Many of those migrant workers, but also many low-skilled Thai workers, have informal work arrangements and are sometimes paid below the minimum wage without unemployment protection. More recently, basic social protection has improved in some areas: the 2002 universal health coverage scheme and the 2009 universal allowance for the elderly provide access to services for all, including those in the informal sector.

Significant informality among migrant workers also results in persistent issues in other areas of responsible business conduct, although government efforts have been strengthened with enhanced inspection frameworks, improved laws and increased penalties in case of abuse. Thailand is the first Asian country with a National Action Plan on Business and Human Rights (Chapter 9).

The COVID-19 outbreak is putting new pressure on income and wealth inequalities in Thailand. Both the 1997 and 2008 crises led to increased unemployment and income inequalities and these are likely to spike once more. Significant job losses are already being reported by the Department of Employment. People with informal and precarious employment conditions, including those with small family businesses, are most affected. The government has introduced important measures to address economic challenges facing households (Chapter 2).

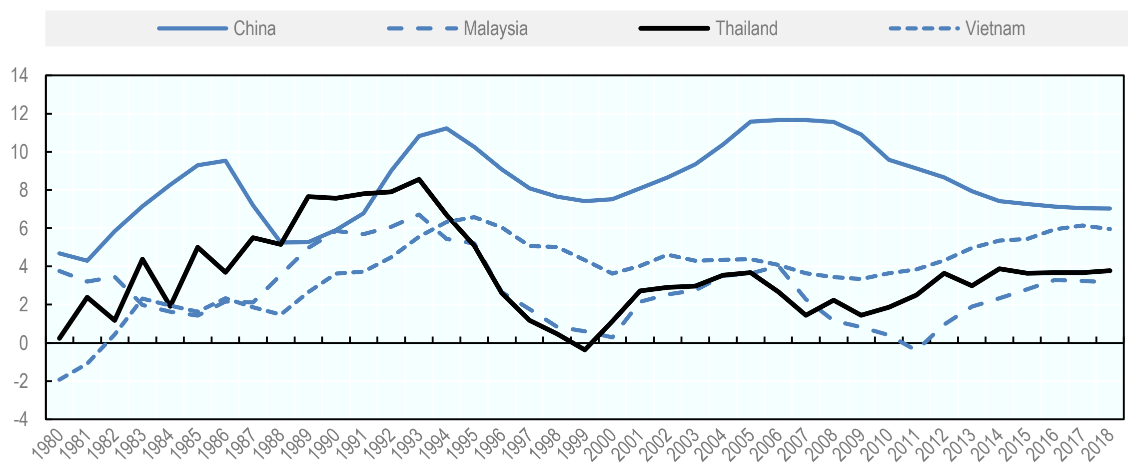
Rapid economic growth in Thailand has also led to significant use of natural resources, resulting in rising environmental challenges (Chapter 10). Thailand suffers from frequent and severe floods and droughts, causing loss of life and significant economic disruption, and is particularly vulnerable to climate change. Air pollution is an increasing challenge, particularly in urban areas, exacerbated by increasing vehicles, construction activities and agricultural burning. Waste management and water pollution are also a severe problem, and illegal dumping of plastics into water bodies in Thailand has global ramifications for oceans' health. Carbon dioxide (CO_2) emissions from the use of fossil fuels have increased rapidly but remain below the OECD country average. Recognising these challenges, Thailand has made strides in developing a comprehensive and consistent policy framework for green growth and the environment and in promoting green investment and sustainable finance. The COVID-19 outbreak further hampers the green transition. The planned transition from fossil fuels to renewable energy is now being challenged by the unprecedented health emergency and economic crisis, and the collapse in oil and gas prices and decline in coal prices may reduce support for renewable energy.

Thailand's competitive stance

Thailand's competitiveness moved from the production of agricultural to industrial goods between 1980 and the mid-1990s. This transition was accompanied by rapid growth in labour productivity, at yearly rates often above 8% (Figure 1.3). Productivity has slowed in the past few decades, as Thailand no longer benefits from shifts of labour from agriculture to more productive manufacturing activities. Competitiveness in labour intensive manufacturing is constrained by rising labour costs related to an ageing workforce and higher worker expectations. Rising labour costs have not been matched with improvements in worker skills and the capability of firms to engage in higher value added activities in manufacturing and services.

Figure 1.3. Relatively low productivity growth since mid-1990s

Labour productivity growth (5-year moving average, in %)



Source: OECD based on Conference Board's Total Economy Database.

The Thai government has confronted the challenge to competitiveness and the ambition of Thailand 4.0, the 20-year strategy and the BCG economic model with highly ambitious plans and programmes to enhance productivity of five existing and five new target sectors (including some services), boost innovation capacity, accelerate human resource development and promote area-based economic development to reduce income and territorial inequalities (Chapter 2). Investment promotion and facilitation policy, led by the Board of Investment (BOI), plays an essential role in achieving the Thailand 4.0 vision and is discussed in details in the next section and Chapter 5. Investment promotion activities are complemented and to some extent coordinated with those of other ministries and state agencies (e.g. Ministry of Finance, Ministry of Commerce; Ministry of Higher Education, Science, Research and Innovation, MHESI); Eastern Special Development Zone Policy Office; Industrial Estate Authority; Ministry of Industry; and Office of Small and Medium Enterprises Promotion). This section summarises key findings on Thailand's competitiveness, the contribution of FDI and related policy initiatives.

Thailand's productivity challenge might become yet more important as the world has moved into a global economic crisis related to the COVID-19 pandemic. There are a number of factors which might further impair global and Thai productivity growth, including higher transactions costs, lower mobility, and a reduced scope of resource reallocation across firms, sectors, and countries. SMEs are likely to be the most affected, potentially increasing already severe productivity inequalities. On the other hand, innovations prompted by the need for new ways of working could generate a positive productivity impulse. While crisis implications should be taken into account for short and longer term policy priorities, it is important to take stock of Thailand's competitiveness even if it based on pre-crisis data at the moment. Understanding

Thailand's competitiveness will help identify strengths and weaknesses of the economy and inform policy directions during the recovery.

Productivity in targeted activities is improving

Although Thailand's labour productivity in targeted manufacturing and service activities has been improving recently, productivity levels in these activities still lag considerably behind levels in more advanced economies, particularly in services. This is associated with a persisting dominance of lower value added activities within targeted sectors. An alternative measure of competitiveness is the extent to which Thailand has a revealed comparative advantage to manufacture specific products and sell services on global export markets. The analysis shows that activities of strategic priority (such as the manufacture of modern batteries, aircraft and spacecraft, bio fertilisers, or advanced business and IT services) are currently far from having a comparative advantage on exporting markets.

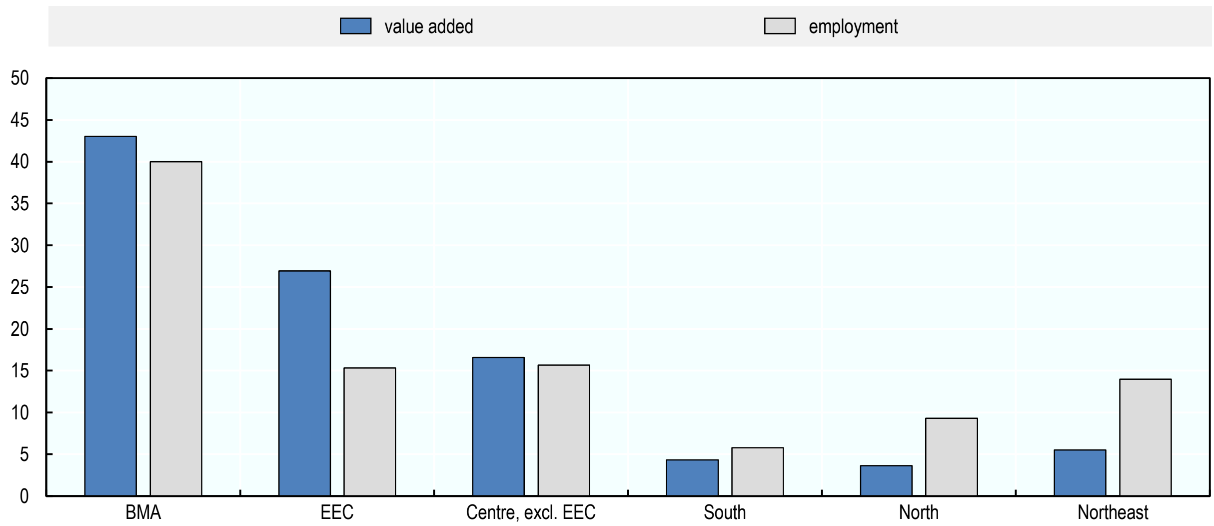
The BOI provides tax exemptions to enhance investments into specific productivity-enhancing activities within the ten target industries and services. More generous tax exemptions are provided for higher levels of technology and value creation within the supply chain, as Thailand 4.0 focuses on developing advanced services and services also play an important role in enabling higher value chain activities in manufacturing (Chapter 6). Nevertheless, foreign investments in a number of services require prior permission under the FBA. Government efforts to attract FDI into targeted sectors under Thailand 4.0 have started to pay off, although at a relatively slow pace which could continue due to the COVID-19 crisis. For example, automobiles, electronics and logistics have received comparatively high shares of total FDI, but FDI growth over the past five years has remained modest in most of these sectors. Based on the analysis in Chapter 4, it is unclear to what extent prioritised, high-value activities within these sectors are expanding investment or whether the mass of new investments involve activities in which Thailand has had a comparative advantage over a long period.

Beyond attracting FDI into targeted sectors, the role of foreign investment in Thailand's efforts to enhance productivity and sustainable development is also revealed by foreign firms' performance premium over average domestic firms. In most manufacturing and services sectors, foreign firms tend to be more productive, invest more in research and development (R&D), pay higher wages, and hire larger shares of skilled workers and women. While these performance premia of foreign firms confirm the importance of the direct contribution of foreign firms to the Thai economy, it may also point to persistent gaps in adequate capabilities of domestic firms, which in turn are an important prerequisite of positive FDI spillovers.

Recent policy efforts address regional and firm-level productivity disparities

Competitiveness remains highly unequal across regions and provinces, with wider Bangkok and the Eastern Economic Corridor (EEC) leading the way and reporting growing labour productivity in priority activities. Foreign firms are also concentrated primarily in the Bangkok Metropolitan Area (BMA), the EEC provinces, and the rest of the Centre (see Figure 1.4 for manufacturing).

Figure 1.4. Foreign activity is concentrated in BMA, EEC and the Centre



Note: BMA = Bangkok Metropolitan Area; EEC = Eastern Economic Corridor provinces. Services include trade, hospitality and professional services.
Source: OECD based on Thailand's Industrial Census.

In recent years, various area-based schemes have been introduced to advance Thailand's economic development towards higher value added activities and expand socio-economic development to regional and local levels. The BOI used a cluster-based policy in 2015-17 to promote business clusters that operate within concentrated geographic areas and function through interconnected businesses and related institutions. Investment uptake was relatively low under this policy, however. With the introduction of Thailand 4.0, area-based policies moved away from wide ranging cluster development across Thailand towards a geographically much more concentrated strategy, namely the EEC whose Act came into force in 2018. The EEC strategy is supplemented by numerous ministerial projects, such as the EECi Innovation Hub that fosters international innovation collaboration in target sectors and is governed by the MHESI. Thailand continues to promote inclusive growth through additional area-based policies, including the Border Special Economic Zone (SEZ) Development Policy, as well as promotional efforts in border provinces in Southern Thailand and in the 20 poorest provinces in the East and North of Thailand. Broad-based economic and sustainable development across all regions is also being reinforced with the newly introduced BCG economic model. These efforts need to further ensure that protecting local communities rights (e.g. over land acquisitions) is guaranteed and industrial practices are environmentally sustainable.

Significant productivity disparities are also observed across foreign and large domestic firms as well as SMEs. Foreign firms are the most productive in all sub-national regions, closely followed by large domestic firms. SMEs are only half as productive as larger and foreign firms in wider Bangkok and EEC provinces and fall even further behind in less developed regions. Some of these disparities are partly alleviated through business linkages between foreign and domestic firms, as Thai firms that develop linkages with foreign firms are more productive relative to Thai firms that do not (Chapter 4).

Recognising firm-level disparities between foreign and large domestic firms on the one side and domestic SMEs on the other side is highly important when it comes to the design of policies and programmes related to Thailand's upgrading in GVC positions in support of progress toward Thailand 4.0. While SMEs are often less productive than larger firms, SMEs in Thailand are revealed to face particular difficulties to compete and upgrade due to the dominance of large domestic conglomerates, including state-owned companies, as well large affiliates of foreign firms.[1] It is further shown that it is mostly large firms, both domestic and foreign, that benefit from BOI promotion, which puts larger firms at an additional competitive advantage vis-à-vis domestic SMEs (Chapter 5). As mentioned above, BOI promotion involves tax incentives such as tax holidays to attract investment into targeted, high-value activities in which domestic SMEs do often not compete.

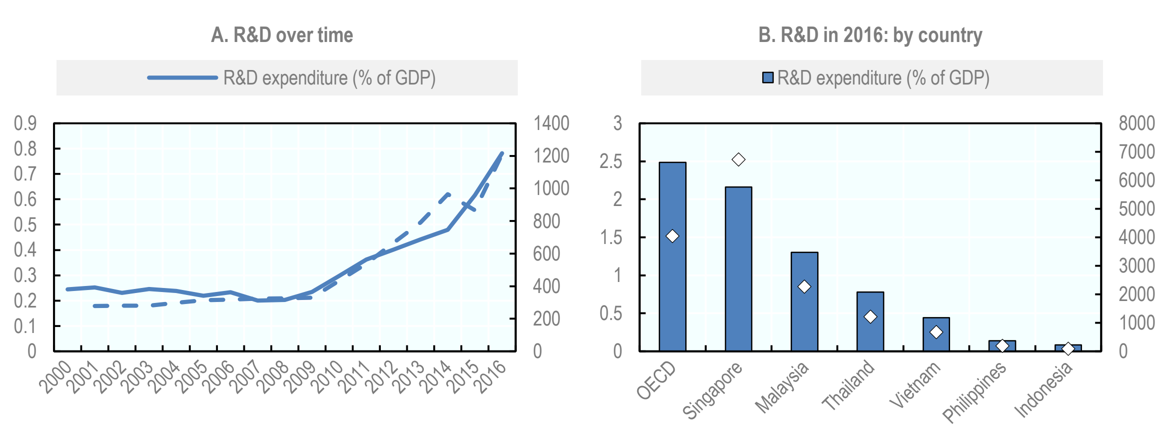
Thailand 4.0 ambitions can only be attained if public policies help to level the playing field for all types of firms. For example, all firms – independent of whether or not they are promoted – should benefit from import duty reductions and may benefit from merit- or performance-based support but this is currently not the case (see policy directions provided below and in Chapter 5). It is of utmost importance to put the emphasis on SME upgrading, even if upgrading does not involve technology frontier-type of activities. BOI promoted firms may receive performance-based tax exemptions if they engage in developing and training local suppliers. SMEs themselves may receive specific information and technical support from the BOI, as well as from a number of other state agencies involved in the promotion and support of local firms and SMEs (e.g. the Ministry of Industry, or the Office of Small and Medium Enterprise Promotion).

Innovation capacity and human capital are increasing

In terms of innovation capacity, important progress is being made. Research and development (R&D) has increased in recent years (Figure 1.5), resulting in a patenting surge of Thailand-based inventions. Nonetheless, total innovation output need to be accelerated to catch up with comparator countries, such as Malaysia or Singapore.

Thailand's investment promotion policy aims to attract investment into research and development (R&D) projects in the 10 target sectors and particularly in the area of four core technologies in which Thailand is considered to have potential to enhance the country's overall competitiveness, namely biotechnology, nanotechnology, advanced material technology and digital technology (Chapter 5). Projects must involve a component on technology transfer by cooperating with educational and research institutions, for example via programmes of the National Science and Technology Development Agency (NSTDA) or the Thailand Institute of Scientific and Technological Research, under MHESI. Technology-based projects can receive a corporate income tax exemption of up to 13 years from the BOI. If considered as high-impact investments under the newly enforced Competitiveness Enhancement Act 2017, tax exemptions may be granted for up to 15 years. Beyond programmes of the BOI and MHESI, other government agencies – such as the Revenue Department – are also providing support and incentives to improve innovation capacity.

Figure 1.5. R&D activities are picking up in Thailand



Note: R&D expenditures and researchers includes activities by public and private institutions (include business sector).
Source: OECD based on World Bank Development Indicators

The lack of adequate human resources has long been a challenge for Thailand's competitiveness and requires a systematic overhaul in education starting from primary level upwards. Thailand's plan to become a value-based, innovation-driven economy, and to attract investment accordingly, is only possible if the remaining skills gap and mismatch is addressed. This holds not only for the most advanced skills of researchers, engineers and managers, but also and essentially for skills of technicians and vocational workers. Thailand has a systematic undersupply of secondary and lower vocational skills. In 2013, the labour market demand of secondary and lower vocational skills exceeded 50% of total demand, while the supply of those skills was only around 10% of total supply. The Office of the Vocational Education Commission, along with programmes of the BOI and MHESI, have recently boosted efforts and programmes to increase both the quantity and quality of vocational skills and make technical training more attractive to Thai students. These programmes are increasingly developed and coordinated with the private sector and educational institutions. They often require students to combine practical training in companies with classroom education; an example is the Work-integrated Learning (STI-WiL) programme, introduced in 2012 by the former National Science Technology and Innovation Policy Office (STI).[2]

Turning to advanced skills of researchers, engineers and managers, the system has not been producing the types and quality of graduates required by the labour market. For example, in 2010, approximately 15 000 engineers graduated from Thai universities but the predicted demand was more than six times as high. STEM qualifications are required by 40% of total demand for workers with a university degree in Thailand, while only 20% of total supply of higher education graduates have a background in STEM. More recently, the challenge may no longer lie in the quantity but rather the quality of STEM skills. The creation of the MHESI in 2019 and its determined reform agenda – including related to enhanced coordination and joint initiatives of government agencies, educational and research institutions, industry and the local community – is an essential step to address the skills and innovation challenge.[3] The Thai government is also inclined to attract foreign talent to develop the ten target industries. For that purpose, the SMART visa programme has been designed to attract foreign science and technology experts, senior executives, investors and start-ups (see further discussion below and in Chapter 5). While this programme is useful to address an immediate challenge, broader alignment and reforms are required to facilitate entry of foreign workers and to produce required skills within Thailand.

Government efforts and adaptation of firms to labour and skill shortages seem to be fruitful in Thailand's manufacturing sector. In Thailand's two manufacturing centres (wider Bangkok or BMA; and EEC), labour shortages have been decreasing in recent years. While in 2011 around 30% of foreign and large domestic firms reported labour shortages to be a major problem for their operations, only around 20% said the same in 2016. The provision and expansion of in-house training among foreign and large domestic firms is particularly common: over 40% of firms provide training, with increasing numbers in recent years. Rising and relatively high shares of in-house training among larger firms (foreign firms are also often large) is due to the requirement for firms with more than 100 employees to do so under the Skills Development Act 2002. While firms have been adapting with worker training to address the skills gap, more than a fifth of foreign and large domestic firms still expected the government to increase efforts to provide adequate training and skills to workers in Thailand in 2016.

Investment promotion policies to build a knowledge-based economy

Investment promotion and facilitation policy in Thailand has an impressive record in stimulating foreign and domestic investments, which has profoundly transformed the economic landscape, contributing to the emergence of new industries such as the automotive sector. Overall, promoted companies' weight in the Thai economy is colossal and they are pivotal for the enhancement of strategic areas such as the EEC. Despite forming less than 3% of registered companies, they generate one-third of national value-added, employ one in ten skilled workers and constitute almost a quarter of all business expenditures on R&D and training (Table 1.1).

Table 1.1. The weight of promoted industrial establishments in the Thai economy

Promoted firms in % of all establishments (unless otherwise specified)

	2011	2016
Promotion certificate status	2.5%	2.4%
Promoted foreign-owned (% of all foreign-owned firms)*	68%	68%
Promoted exporter (% of all exporters)	32%	35.5%
Value-added	34.4%	29.7%
Employment, among which:	20.3%	20.9%
Skilled	*10.4%*	*10.9%*
Unskilled	*7.5%*	*7.4%*
Other	*2.4%*	*2.5%*
Spending on R&D	52%	23%
Spending on training of employees	32%	20%

Note: * foreign-owned: 51% or more foreign shareholding.
Source: OECD based on the Industrial Census of Thailand 2012 and 2017.

The net positive impact of investment promotion in Thailand is, however, not a given as the government's forgone revenues due to tax incentives can be considerable. In addition, the effectiveness of investment promotion policies in contributing to the development of a knowledge-based economy, supporting technological progress, closing the skills gap and reducing income and territorial inequalities has become a growing challenge for the government. For instance, the percentage of promoted manufacturers that engaged in R&D and skills expenditures, and the budget they devoted to these activities were lower in 2016 than in 2011 (Table 1.1). The COVID-19 outbreak may further exacerbate these structural challenges.

Modernising the institutional framework for investment promotion and facilitation may help the BOI focus on core investment promotion activities

The BOI is a key pillar of Thailand's institutional ecosystem. The initial duty of the agency five decades ago continues to be its core mandate today, which is to issue promotion certificates (for both domestic and foreign investors) and amend the list of activities that are eligible for tax incentives and non-tax concessions such as eased restrictions on foreign shareholdings and expatriate workers. Foreign investors subject to Foreign Business Act (FBA) restrictions are in fact more likely to enter Thailand under the Investment Promotion Act than under the FBA or provisions under international treaties (Chapter 6).

Because of its recognised efficiency among state agencies, the BOI has inherited new responsibilities over the years, such as attracting foreign talent, including entrepreneurs, and facilitating their entry. Thailand's over reliance on the BOI could end up weighing on the capacity of the agency to perform its various mandates effectively. Attracting investors and talented foreign workers on the one hand and ensuring that they comply with legal requirements on the other are two different functions with different objectives. Mixing the mandates could affect the efficacy of the agency and also its credibility as it is supposed to represent investors' interests in policymaking while regulating them at the same time.

Investment promotion strategy supports wider goals such as Thailand 4.0…

The current investment promotion scheme of the BOI runs from 2015 to 2021 and aims to enhance Thailand's competitiveness, overcome the middle-income trap and achieve sustainable growth, all in line with greater ambitions related to Thailand 4.0, as described above. Since 2015, the scheme has been augmented and more specifically tailored to higher level plans and strategies and the promotion of the ten target sectors.

The strategy introduced a few novelties with regard to the pre-2015 incentives scheme but did not bring fundamental changes (Chapter 5). The BOI's proclaimed shift from broad-based to more targeted incentives was a positive development. Around 50 activities were no longer promoted when the strategy entered into force in 2015, although it is not clear whether the eligible list has been further reduced since then. The government amended the Investment Promotion Act in 2017 to introduce technology-based incentives, which are more horizontal and less sector-specific, thereby reducing their distortive impacts on the economy.

…but the incentive scheme is complex and could make it harder to level the playing field for all firms

The wider tax incentive scheme continues to be complex and its generosity can weigh on the ability of non-promoted firms, particularly SMEs, to compete on equal basis with promoted businesses. Activity-based incentives such as exemptions of corporate income tax (CIT) and import duties still dominate the basic incentives scheme. The main innovation was the introduction of merit-based incentives that provide an add-on to the basic scheme with additional CIT exemptions and tax deductions if a project undertakes R&D or skills development activities or locates in specific regions or in an industrial area (cost-based incentives). The merit-based scheme is a positive development as it is preferable to activity-based incentives, which can generate important forgone revenues. The design of the merit-based scheme could be further improved to attract investment with higher development impacts. This involves streamlining the application process, clarifying the decision criteria and reduce overlaps with incentives schemes granted by other government bodies.

Recent investment facilitation initiatives should help improve the business climate…

The Thai business climate is one of Southeast Asia's most favourable for investment. Thailand has registered notable improvements in World Bank's Doing Business ranking since 2016. Over the past 12-months, it has surpassed six other countries and now ranks 21st out of 190 countries worldwide. This progress was driven by improvements in the indicators dealing with construction permits, starting a business, getting electricity and resolving insolvency. Further improvements can be made to cope with fiercer competition and generalised improvements in neighbouring countries' business environments. Policy areas that are crucial for attracting higher value-added investments in R&D and advanced technologies could be further improved, such as enforcing intellectual property (IP) rights (Chapter 7).

The 2015-21 investment promotion strategy did not include major changes with respect to investment facilitation. Nonetheless, the BOI undertook other important initiatives to improve the wider framework for investment facilitation and retention. These new initiatives include, but are not limited to, the creation of the Strategic Talent Centre and the SMART visa programme to attract foreign talent and start-ups, easing restrictions on the entry of unskilled foreign workers and improvements in the administration of the One Start One Stop Investment Centre (OSOS) and the services it provides. Monitoring regularly the impact of these different initiatives, and ensuring that they are well-coordinated, would increase their success rate.

…but whole-of-government reforms to attract foreign talent are necessary

Notwithstanding the relevance of recent initiatives to attract foreign talent, streamlining the wider legal and institutional framework for the entry of foreign workers continues to be necessary. The benefits and costs of stringent migration policies such as TM30 (landlords must register non-Thai nationals living in their properties) must be assessed against the wider objective of attracting foreign talent. If there are any identified benefits, other tools must be considered to remedy the situation, such as through reforms envisaged by the Guillotine Unit (Simple and Smart Licence project). In the medium to long term, structural reforms easing foreign talent entry would make obsolete those initiatives such as the Strategic Talent

Centre or the SMART Visa programme, which affect the capacity of the BOI to focus on its core investment promotion and facilitation mission.

The COVID-19 pandemic triggered immediate policy responses to support existing investors and pave the way for a sustained recovery

The COVID-19 outbreak, and the risk of reduced FDI flows as a consequence, makes it even more relevant for the BOI to accelerate its transition toward promoting activities with a high developmental impact, supporting a sustainable recovery. During the first quarter of 2020, the number of applications submitted to the BOI increased slightly compared to the same period last year but the total invested capital declined by 44%, as projects were smaller. To respond to the crisis, the BOI rapidly adapted its activities and adopted new measures. It has taken measures on the investment facilitation front, followed by other measures to mitigate the impact of the crisis on investment, including tax incentives to accelerate investment in the medical sector.

Policy options to make investment promotion and facilitation more effective

It is premature to draw definite conclusions on the outcomes of the 2015-21 strategy and its wider effects on R&D and skills, particularly with the COVID-19 outbreak, but interim analysis raises a few observations. First, the incentive scheme did not radically change the distribution of investment by sector, at least until the end of 2019. Second, the most generous incentives are not granted to investment projects with higher foreign ownership shares or higher shares of foreign workers which is somewhat unexpected given that the most generous incentives are granted to activities with no or very few existing investments in Thailand, which would therefore potentially depend on foreign investment and knowledge brought in by foreign workers. Third, incentives to spend on R&D and skills have had a modest impact although this may improve with time. Last but not least, promoted firms are more geographically concentrated than their non-promoted peers. Activity is confined to the EEC, and border SEZs may not be able to reverse this pattern.

Short- and medium-term policy priorities:

The following policy considerations to strengthen promotional efforts could be implemented without adjustments to BOI's broader mandate and legal obligations and would not require coordination with other government agencies involved in attracting investment into R&D and skills development, for example:

- Streamline the tax incentive framework and rethink the design of some schemes to limit forgone revenues and attract investment with higher development impacts:
    - In the short-term, and to pave the way for a post-COVID-19 recovery, maintain the level of granularity in the general list of activities eligible for investment promotion but continue lowering the number of promoted activities and progressively reduce the incentives of those in sectors with lower comparative advantage. The next strategy could focus, instead, on more horizontal activities that can continue building the foundations for a knowledge-based economy, such as promoting investment in advanced technology, R&D, skills development, and the medical sector.
    - In the medium-term, improve the design of the merit-based scheme to attract investment with higher development impacts and eventually expand the scheme to all firms to level the playing-field with non-promoted companies, particularly SMEs. The application process could be further streamlined and the decision criteria could be eased. Furthermore, gradually move from exemption of corporate income tax and import duties to a scheme with tax credits and deductions as the main type of tax incentives. In parallel, explore reducing import duties.
- Conduct a thorough and informed cost-benefit analysis of the overall effectiveness of the 2015-21 tax incentives scheme. The results should be made publicly available. Disclosing information on

overall forgone revenue through tax incentives would greatly support the government in its efforts to move away from a profit-based investment promotion to a merit-based strategy to attract and retain more sustainable investments.

- Sharpen the quality of the investment generation activities to better target top foreign multinational firms, particularly foreign R&D performers, and continue the efforts to facilitate investment entry and retention and improve the broader business climate for R&D performers. After-care services could focus on enhancing reinvestments, particularly in R&D activities.
- Further involve the private sector and other relevant stakeholders in the decision-making process of the BOI to ensure that the views and interests of all businesses are taken on board in BOI's broad strategic directions. The Board of the BOI could also include public and private representatives from the innovation and education policy communities and wider civil society as well as being more gender balanced.

Long-term policy priorities:

The following policy considerations require coordination and alignment across multiple government agencies and broader policy and institutional reforms, beyond the scope of the BOI mandate. They could be initiated in the short-term but are likely to involve a medium-term planning horizon.

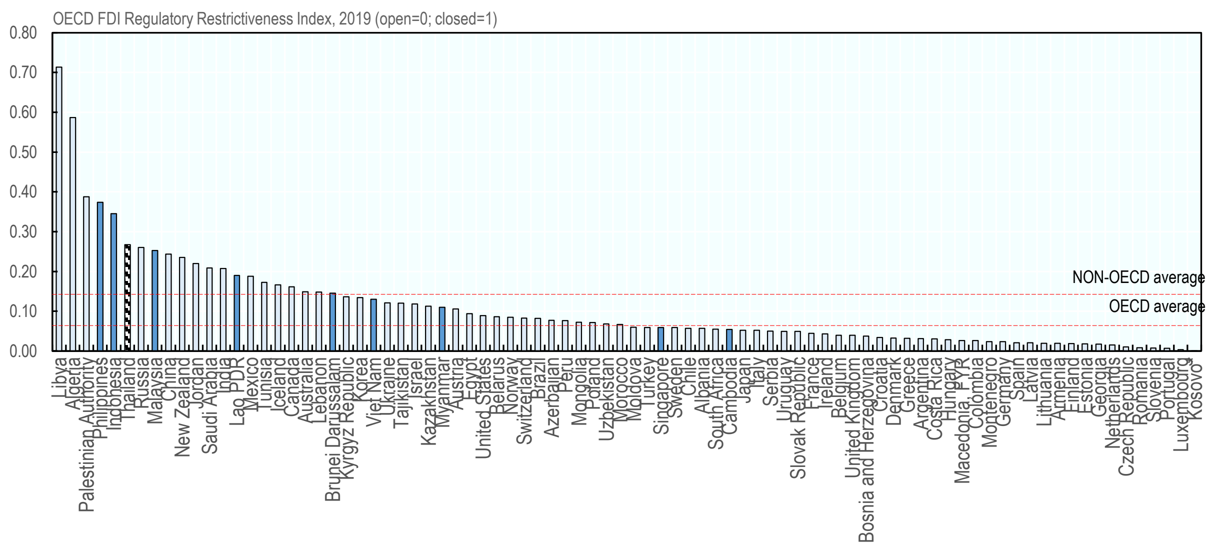
- Ensure that investment promotion and facilitation responsibilities are balanced across government agencies, sufficiently funded, explicit, and mutually understood and clear for all. To safeguard the BOI's efficiency over the longer-term, consider the option of liberating it from some of its functions (e.g. separating policymaking and regulatory mandates and promotion and facilitation tasks) if, and only if, the same quality of services can be provided. The success of such an option is conditional on undertaking other reforms:
    - Re-evaluating and reforming the FBA may be an opportunity to adjust the Investment Promotion Act and eventually liberate the BOI from its mandate to provide non-tax incentives to foreign investors (Chapter 6).
    - Clarifying the wider institutional framework for attracting and facilitating foreign workers' entry and assessing how best to perform the mandate of foreign talent attraction across government agencies. The know-how of the BOI as an effective agency could be replicated for such reform.
    - Continue streamlining the wider legal framework for the entry of foreign workers, with the ultimate, long-term objective to make BOI's SMART visa and related programmes obsolete as they are not part of the agency's core competencies. Available and transparent data on the stringency of migration policies could raise awareness and help concerned agencies advocate for policy change.
- Provide better statistics to support evidence-based investment promotion policy making. The BOI could develop a nomenclature for promoted activities that can be matched with product-level trade statistics. In addition, the agency, in co-operation with the National Statistical Office, could match the project-level data collected by the BOI with the establishment-level data of the Industrial Census of Thailand to assess more accurately the outcomes of the merit-based incentives on productivity, exports, R&D, skills development, and other outcomes.

Improving Thailand's foreign investment regime

It has long been recognised that globalisation offers substantial opportunities for participating countries, but that it also requires an ability for rapid adjustment for them to benefit from these opportunities. Possibly no other region has grasped such opportunities as well as Southeast Asia. Thailand was among the first in the region to recognise the powerful role that foreign investors could play in fuelling export-led growth, and was quick in opening up to foreign investment, albeit selectively (mostly in manufacturing as demonstrated below). As with any other policy, there are likely aspects which could have been better designed or implemented, but few today would call those policies into question altogether. There is a broad understanding that such policies and the FDI they subsequently fostered has enabled Thailand to emerge as one of the region's leading manufacturing hubs, to the benefit of the Thai economy and its society more broadly.

As in many other emerging economies, Thailand has not backtracked on those early FDI liberalisation efforts, but nor has there been much further liberalisation since then. Over time, other ASEAN Member States have caught up and even surpassed Thailand in terms of openness to FDI (Figure 1.6). Partly as a result, Thailand is no longer attracting FDI as it used to, despite the increased appetite of foreign investors for the region (Chapter 4).

Figure 1.6. OECD FDI Regulatory Restrictiveness Index: a historical perspective, 1985-2018



Note: See Chapter 6; note to Figure 6.3.
Source: OECD based on the OECD FDI Regulatory Restrictiveness Index methodology.

Opening services is important to enable upgrading in global value chains

Thailand's primary and services sectors remain particularly restrictive to foreign investment, according to the OECD *FDI Regulatory Restrictiveness Index* (Chapter 6). Services liberalisation – including a number of 'behind-the-border' policy dimensions important for services development – has typically lagged behind that of manufacturing in most countries, and, in this respect, Thailand's experience is no different. Having recently established the 'Thailand 4.0' vision of becoming a high value added, high income economy by 2037 (Chapter 2), the development of various services sectors as a means for achieving this vision, including through enhanced access for foreign investors, is important. In the modern context of intensified regional and global value chains (GVCs), FDI policies should address services and goods manufacturing at the same time.

The development of competitive service sectors has great potential to enhance inclusive growth and productivity in Thailand. Besides providing productive job opportunities, services have major implications for the development and upgrading of Thailand's manufacturing industries, notably in a context of global value chains. Modern services can enable more efficient and resilient supply chains and play an increasingly important role as inputs into advanced manufacturing and innovation. The growing ‘servicification’ of manufacturing activities is reflected in the increasingly significant share of services value added embedded in manufacturing value added. To achieve Thailand 4.0, the service sector will need to be further developed to match the profile of countries which have already achieved such a status. Services account for about 30% of the value added embedded in its manufacturing exports, which is only slightly below the OECD average, but only about half of it is domestically generated (the rest being imported), against about 90% in the case of OECD economies.

It is, therefore, timely for Thailand to reflect on its strategy towards developing such a high-end services and high-tech manufacturing economy. As with its export-oriented manufacturing strategy back in the 1990s, there are likely positive ways in which services FDI liberalisation could be helpful in this context. Although services tradability has increased over time with the rise of digital and communication technologies, they remain naturally more complex to trade than goods. Unlike trade in goods in which factors of production are built into the traded goods themselves, services typically require the actual relocation of capital and labour across borders, often through FDI.

Thailand’s current FDI policy concerning services still shares similarities with its policy back in the early 1970s, with the exception of investment incentives (see previous section). Back then, faced with a backlash against growing foreign investment in Thailand, the government promulgated the Announcement of the Revolutionary Council No. 281 of 1972 (ARC 281), which was the first law explicitly governing FDI. The act introduced strict barriers to entry and operation of majority-foreign investors across all sectors, including manufacturing and services. The objective was overtly to protect indigenous Thai businesses given that Thai technology was not yet competitive, together with national security considerations in a few sectors.

In 1999, the law’s incompatibility with attempts to promote foreign investment and international trade and the more open approach adopted in other countries gave rise to the Foreign Business Act of 1999 (FBA), still in force today. The FBA liberalised FDI in many sectors, mostly in manufacturing, but still kept most of the restrictions pertaining to services, notably foreign equity limitations in certain activities (such as media and transport) and the need for government approval for holding majority shareholding stakes in all but a few services activities. Apart from the FBA, the government exercises similar controls through sector-specific and other legislation, which prevail over the Act. Looking back, the liberalisation embodied in the FBA was circumscribed even in manufacturing where, unusually given the experience worldwide, it kept some restrictions as well. Compared to other economies in the region at the time, Thailand still maintained a relatively more open environment to FDI, but with almost no additional FDI liberalisation in Thailand since then. As a result, many other ASEAN Member States have now surpassed Thailand in openness.

The government is, nonetheless, currently considering pursuing further services FDI liberalisation. In 2019, the Foreign Business Commission reviewed the list of restrictive business categories under the FBA and identified four additional activities to be removed from the list, namely: i) Telecommunications business (type 1 licence) in accordance with the Telecommunications Business Act; ii) Treasury center in accordance with the Exchange Control Act; iii) Certain aircraft maintenance; iv) High value-added software development activities. Foreign investments in these activities would be dispensed from obtaining a foreign business licence under the FBA. The proposed changes are justified *inter alia* on the basis of the importance of such business categories for supporting the development of Thailand’s ‘New S-curve’ digital industries (see Chapter 3 and 5), as well as on the need to reduce duplication of government oversight as these businesses are governed by specific laws. Another 18 business categories are proposed to remain restricted until further study is undertaken by the Foreign Business Commission. Proposed changes are not yet in force, awaiting needed ministerial regulations for becoming effective, but denote a welcoming step towards modernising Thailand’s foreign investment regime.

Exemption channels and legal loopholes enable foreign investment into restricted activities

Although the law includes screening mechanisms and restrictions, some flexibility is offered to foreign investors through different exemption channels. Preferential treatment is accorded to foreign investors under bilateral treaties. Promoted investors under the Investment Promotion Act and the Industrial Estate Authority of Thailand Act can benefit from an exemption of certain restrictions enshrined in the FBA. Unofficially, some investors have also exploited legal loopholes, such as preferential shares and indirect ownership, to by-pass some of the restrictions in place

Hence, in practice, Thailand has been more open than a simple reading of the legislation would suggest. But remaining legal loopholes and inconsistencies are likely to impose an additional cost for investors and Thailand. In 2007, the Ministry of Commerce prepared a bill to amend the FBA to limit if not end existing legal loopholes, which would render the regime *de facto* more restrictive, but the proposed reform did not go forward in the face of opposition from investors.

Objectives of the foreign investment regime should be re-assessed to prioritise reforms and reduce legal uncertainty for investors

Considering all these issues, it seems timely and appropriate for Thailand to undertake an assessment of the impact of the FBA and remaining sectoral restrictions to FDI on the economy. For almost 50 years, various domestic services industries have to a great extent been insulated from foreign competition. Such an assessment would identify to what extent this policy has served its intended public purpose of enabling the development of vibrant local firms and capabilities, as well as activities or sectors that should be accessible for foreign competition. It is also suggested to assess the effect of this policy on other parts of the economy.

Thailand's inaction in correcting the FBA's legal loopholes, in spite of the above-mentioned attempts, may suggest a more lenient attitude from the authorities towards foreign investment over time. If this is the case, a reform bringing the regulatory regime in line with current practice would serve to reduce uncertainty and provide a signal to the business community that Thailand welcomes foreign investors. If, instead, there are strong arguments for maintaining restrictions in place, such as national security, then the government could reconsider addressing some of the legal loopholes that currently erode the FBA's original intent.

Moreover, FDI in Thailand is subject to a dual-track system of foreign entry into Thailand. Generally, investment in Thailand without incentive and promotion is governed by the FBA which applies screening and restrictions to FDI. On the other hand, the legal framework for attracting FDI in Thailand is based on the Investment Promotion Act (IPA) which encourages FDI in some restricted activities under the FBA. Under the Investment Promotion Act, the BOI is mandated to fulfil a *de facto* regulatory function involving eased restrictions on foreign shareholding, on top of its core investment promotion mandate (e.g. provision of tax incentives for promoted firms). Re-evaluating and reforming the FBA may also involve an opportunity to adjust the Investment Promotion Act and eventually liberate the BOI from its mandate to provide non-tax incentives to foreign investors and focus instead on core investment promotion activities (Chapter 5).

Main policy options for consideration by the authorities

The right of governments to favour some investors over others in order to achieve social, economic or environmental goals is widely accepted, but any policy that discriminates against one group of investors involves a cost. Discriminatory measures can thus only serve the broader public interest to the extent that their potential costs in terms of forgone investment and potential efficiency gains are compensated by broader social and economic benefits. For this reason, they need to be constantly re-evaluated to determine whether their original motivation remains valid, supported by an evaluation of the costs and benefits, including an assessment of the proportionality of the measure to ensure they are not more restrictive than needed to address specific concerns.

Short- and medium-term policy priorities:

- Undertake a comprehensive regulatory impact assessment of existing restrictions on FDI and publish the results. Include an assessment of potential non-discriminatory measures that could achieve the same objectives as the FBA.
- Reform the institutional setting of the Foreign Business Commission in charge *inter alia* of annually reviewing and proposing amendments to the list of restricted activities for appreciation by the Minister, notably to include representatives of the Office of the Trade Competition Commission, civil society and academia, as well as from the Joint Foreign Chambers of Commerce of Thailand, and to make meeting records public available, as well as any documentation supporting deliberations relating to the regular review of the list of restricted activities in the FBA.
- Align the general minimum capital requirement for foreign investors to start a business in Thailand with capital requirements for domestic investors. The currently discriminatory minimum capital policy is particularly stringent for investors in less-capital intensive activities, including many high-value added services that could contribute to Thailand’s 4.0 strategy. Worldwide, where minimum capital requirements still exist, they are rarely discriminatory – in 2012 only eight countries out of 98 assessed in the World Bank’s Investing Across Borders imposed a discriminatory minimum capital requirement – and typically much lower than what is required from foreign investors in Thailand. This is the case even across economies with a level of income per capita much greater than that of Thailand.

Long-term policy priorities:

- Align the statutory regime with current practice where feasible in order to avoid unnecessary regulatory uncertainty, and clarify the scope of application of listed activities by indicating their standard industrial classification code under Thailand’s Standard Industrial Classification, which conforms to the International Standard Industrial Classification (ISIC Rev 4).
    - The existence of exemption schemes and legal loopholes allowing foreign investors to by-pass some of the regulatory restrictions on FDI serves to attenuate Thailand’s FDI restrictiveness *de facto*, but does not fully eliminate regulatory uncertainty for foreign investors.
    - The dual-track system implies that there two channels that foreign investors can choose: the approval process under the IPA or under the FBA. Foreign investors who have obtained a BOI Certificate under the IPA will be exempted from a Foreign Business Licence under the FBA, but they have to obtain a Foreign Business Certificate from the Department of Business Development, at the Ministry of Commerce, in order to operate their business in Thailand. In either case, it would be advisable to improve policy coherence to avoid unnecessary regulatory uncertainty. This is the case, for instance, with activities which are promoted under the IPA and at the same time restricted in the FBA, and with activities and sectors where the use of preferential shares and legal loopholes to circumvent restrictions has been largely tolerated.
- Further liberalise FDI restrictions particularly in services sectors to match levels of openness in other emerging economies and to foster greater convergence towards Thailand 4.0.
    - Many primary and services sectors remain partly off limits to foreign investors, potentially limiting economy-wide productivity gains.
    - Most restrictions date from the 1970s. They were introduced to shield Thai businesses from foreign competition until they were ready to compete on their own. There have been few changes to the regulatory environment since then.

- In the past, these policies may have served to discriminate against FDI, but in the current context of GVCs and the intensified ‘servicification’ of manufacturing activities, these measures also possibly discriminate against Thai manufacturing producers and consumers, who may have to pay relatively higher prices for needed quality-adjusted services inputs.

Enhancing domestic investment protection and dispute settlement mechanisms

Rules that create restrictions on establishing and operating a business, principally under the Foreign Business Act 1999, are only one aspect of the broader legal framework that affects investment. Protections for property rights, contractual rights and other legal guarantees, combined with efficient enforcement and dispute resolution mechanisms, are equally important elements of this legal framework for all investors.

Thai law provides guarantees regarding protection from expropriation without compensation and non-discrimination for some, but not all, investors. A range of other treatment guarantees are provided for BOI promoted investors under the Investment Promotion Act 1977 (No. 4) (2017 revision), but these are only available to investors who hold a BOI promotion certificate. There is room for improvement in the levels of protection that investors can expect under Thai law when compared with international good practices. There may also be scope to consolidate the key protections, incentives and obligations for investors (including non-promoted investors) into a single law to improve accessibility. Unlike many of its ASEAN partners, Thailand does not have a single investment law, which means that these aspects of the legal regime affecting investors are scattered across a range of different laws.

Thailand has a well-established system for land rights that is generally upheld in practice, but the legislation governing land tenure still significantly restricts foreigners’ rights to acquire land. The current land titling and registration system has undergone a substantial overhaul since the mid-1980s, with a number of important efficiency and technological advances. Some concerns persist regarding coordination between the various land administration authorities, deficient levels of smallholder rights and the level of electronically-available land records. For the most part, these challenges remain to be addressed. Ongoing efforts to computerise land titling information, especially in regional land offices, are encouraging in terms of their ability to improve the land record management system and reinforce the security of land titles.

Recent reforms related to the protection of intellectual property rights and cybersecurity are key to enable investments into knowledge assets

The government is stepping up its efforts to tackle two important areas for the government’s vision of moving towards a value-based and innovation-driven economy – the protection of intellectual property (IP) rights and cybersecurity. Strong IP rights provide investors with an incentive to invest in R&D for innovative products and processes. The legal and institutional framework for protecting investors’ IP rights has been strengthened in a number of respects in recent years as the government seeks to bring Thailand’s IP regulations closer to international good practices and standards. The government is pursuing a range of different initiatives to address persistent concerns from investors regarding the effectiveness of IP enforcement measures.

Likewise, cybersecurity and data protection are of increasing concern for all investors in Thailand, not only digital and new technology firms that Thailand’s 4.0 vision have placed at the forefront of the government’s policy agenda. The government has recently gazetted two important new pieces of legislation in this area – the Cybersecurity Maintenance Act 2019 and the Personal Data Protection Act 2019. The implementation of these new regimes will be challenging in many respects and will no doubt be closely followed by investors.

Dispute settlement mechanisms are improving in Thailand

In terms of dispute resolution, the Thai courts have a reasonable record for rule of law and contract enforcement when compared to similar economies. The main concerns for investors interacting with the Thai court system relate to the speed and efficiency of case management and the availability of electronic court services, among others. The government has in recent years prioritised efforts to improve the legal framework and institutions for public integrity as part of a broader focus on public sector reforms aimed at improving the business environment. Alternative dispute resolution, primarily arbitration, is widely recognised and well-practiced in Thailand, which is generally considered to be an arbitration-friendly jurisdiction. The new Arbitration Act B.E. 2562 (2019), which amended the previous Arbitration Act to allow foreign arbitrators and lawyers to perform their duties in arbitral proceedings conducted in Thailand without having to obtain work permits, will contribute to the development of Bangkok as a regional hub for international arbitration in the near future.

Policy considerations

Thailand has made important reform strides in terms of its domestic legal framework to facilitate investments into knowledge assets; namely with respect IP protection and cyber security. The implementation of these efforts should be prioritised in the short-to-medium-term, while broader reforms to align investment protection into a single law and removing restrictions to land ownership for foreigners could be longer term priorities.

Short- medium-term policy priorities:

- Continue to prioritise efforts to improve the effectiveness of intellectual property (IP) enforcement measures. Despite a relatively well-developed legal framework for IP rights protection in Thailand, investors continue to report relatively high levels of IP rights infringement, including through the widespread availability of counterfeited goods and unlicensed computer software. The government is already pursuing a range of different initiatives that seek to address these problems but further progress in the implementation of these initiatives may improve overall investor confidence.
- Maintain cybersecurity as a national policy priority. Investors will no doubt follow closely the government's implementation of the Cybersecurity Maintenance Act 2019, which came into force in May 2019, and the Personal Data Protection Act 2019, which is set to come into force in May 2020. All efforts should be made to ensure that these Acts are implemented in a manner that achieves a measurable impact on reducing cyber threats in Thailand and establishes an effective framework for data protection in line with international good practices.

Long-term policy priorities:

- Evaluate possibilities for improving key investment protections under Thai law. Consolidating the key protections, incentives and obligations for investors (including non-promoted investors) into a single law may improve transparency and predictability of the legal framework by helping investors to navigate easily the rules that apply to investments in Thailand. This process might also provide an opportunity to bring the levels of protection from expropriation in line with international standards, codify a non-discrimination principle and consider the appropriate level of obligations placed on investors.
- Evaluate the costs and benefits of maintaining the current restrictions on land ownership for foreigners. While there are some ways for foreigners to acquire land under Thai law, including for the purposes of carrying out a promoted business under the BOI investment promotion regime, the overall effect of the Land Code 1954 is to place significant restrictions on the ability of foreign nationals to own land. Access to electronic information in English regarding land administration system and land tenure rights for foreigners could also be improved.

Investment treaty policy in Thailand

Like many countries around the world, Thailand has taken on international obligations to grant foreign investors specific treatment in international investment agreements (referred to as investment treaties or IIAs). These international obligations in bilateral investment treaties (BITs) or investment chapters of trade and investment agreements have become part of Thailand's legal framework for investment protection. Investment treaties grant protections to treaty-covered investors in addition to and independently from protections afforded by domestic law to all investors. Domestic investors are generally not covered by treaties.

Investment treaties typically contain substantive protections for covered investments against expropriation or discrimination. Provisions requiring "fair and equitable treatment" (FET) are also common and have given rise to widely varying interpretations. While there are some significant recent exceptions, investment treaties also generally give covered investors access to investor-state dispute settlement (ISDS) mechanisms that allow them access to international arbitration to seek monetary compensation in cases where they claim that the host country has infringed these provisions. While domestic law does not typically provide compensation beyond narrowly-defined situations, such as cases of expropriation, compensation has been a common remedy for investors in ISDS cases.

Investment protection provided under investment treaties can play an important role in fostering a healthy regulatory climate for investment. Expropriation or discrimination by governments does occur. Government acceptance of legitimate constraints on policies can provide investors with greater certainty and predictability, lowering unwarranted risk and the cost of capital. Domestic judicial and administrative systems provide investors with one option for protecting themselves. Access to international arbitration under investment treaties gives substantial additional leverage to covered foreign investors in their dealings with host governments.

Investment treaties are frequently promoted as a method of attracting FDI and this is a goal for many governments. Despite many studies, however, it remains difficult to establish strong evidence of impact in this regard. Some studies suggest that treaties or instruments that reduce barriers and restrictions to foreign investments have more impact on FDI flows than BITs focused only on post-establishment protection. These assumptions continue to be investigated by a growing strand of empirical literature on the objectives of investment treaties and how well they are being achieved.

Thailand's investment treaty policy deserves continued attention

The current review of Thailand's investment treaties indicates that Thailand, like many other countries, has a significant number of older-style investment treaties with vague investment protections that may create unintended consequences. Where treaties set forth vague provisions, arbitrators deciding investment disputes have had wide discretion to interpret the scope of protection which has generated inconsistencies and uncertainty. Notably following early reactions in the context of ISDS cases under the North American Free Trade Agreement (NAFTA) in the early 2000s, many governments have substantially revised their investment treaty policies in recent years in response to increased public questioning about the appropriate balance between investment protection and sovereign rights to regulate in the public interest, the uncertain scope of many investment treaties and the costs and outcomes of ISDS. Experiences with the COVID-19 pandemic may shape how governments view key treaty provisions or interpretations and how they assess the appropriate balance in investment treaties.

The Thai government is well aware of these challenges. It plans to start the process of seeking to update existing older-style BITs with treaty partners once its new model BIT is released later in 2020. In the meantime, it is taking a leading role in multilateral discussions on ISDS reform that are developing in UNCITRAL's Working Group III. It has also established in 2019 the Committee on the Protection of International Investment to steer government policy on investment treaties and enhance policy coherence.

The government may wish to recall that regional and plurilateral trade and investment agreements involving ASEAN members offer an opportunity to create an integrated investment region in ASEAN and establish common approaches to investment protection, dispute settlement and liberalisation. At the same time, in the absence of active management of the replacement of treaties, this approach can lead to multiple investment-related agreements being concluded with the same treaty partners. This situation may jeopardise the consistent implementation of Thailand's investment treaty policies: claimants may be able to circumvent newer treaties or domestic legislation by invoking protections and ISDS provisions in older-style treaties that remain in force concurrently.

Considerations for reform of investment treaty policies

The discussion and recommendations below are intended to assist the government in reconsidering its investment treaty policies in light of the above challenges and recent developments in investment treaty policies around the world.

Short- and medium-term policy priorities:

- Conduct a gap analysis between Thailand's domestic laws and its obligations under investment treaties with respect to investment protections. There are differences between Thai law and Thailand's investment treaties in these areas. Overlapping legal regimes for investment protection may raise a number of policy concerns. Identifying and reviewing the impact of these differences may allow policymakers to ensure that these overlapping legal regimes are coherent and do not detract from the government's objectives with respect to investment protection. The newly-established Committee on the Protection of International Investment would appear to be the most obvious body to lead such a process given its steering role for investment treaty policy.
- Manage potential exposure under existing investment treaties proactively. The government should continue to develop ISDS dispute prevention and case management tools. The impact of the newly-established Committee on the Protection of International Investment – which has a centralising role in dispute prevention – should be monitored and measured so that it can be improved over time. The government should continue to participate actively in the work of UNCITRAL's Working Group III and other multilateral fora on these topics. Ongoing awareness-raising efforts for line agencies and treaty negotiators regarding Thailand's investment treaties and the significance of the obligations they contain for the day-to-day functions of government officials are commendable and should be continued on a regular basis. Developing written guidance manuals or handbooks for line agencies on these topics could encourage continuity of institutional knowledge as personnel changes occur over time.
- Continue to actively participate in and follow closely government and other action on investment treaty reforms including at the OECD's FOI Roundtable and at UNCITRAL. Many governments, including major capital exporters, have substantially revised their policies in recent years to protect policy space or to ensure that their investment treaties create desirable incentives. For example, the US and Canada recently agreed to terminate the NAFTA and will now provide only for state-state dispute settlement (SSDS) between them in the United States-Canada-Mexico Agreement (USMCA), which came into force on 1 July 2020, replacing NAFTA, rather than permitting direct investor claims for damages in ISDS. The EU has rejected investment arbitration in favour of a court-like model with government appointed adjudicators for ISDS. Consideration of reforms and policy discussions on frequently-invoked provisions such as FET are of particular importance in current investment treaty policy. Emerging issues such as the possible role for trade and investment treaties in fostering RBC as well as ongoing discussions about treaties and sustainable development also merit close attention and participation.

Longer-term policy priorities:

- The government should continue to implement its plans to assess and where appropriate update its investment treaties to bring them in line with the government's current priorities. The government's experiences with the COVID-19 pandemic may shape how it views key treaty provisions or interpretations as well as the appropriate balance between investor protections and the right to regulate. Depending on the context and treaty language, it may be possible to achieve these goals through joint interpretations agreed with treaty partners. In other cases, treaty amendments may be required. Replacement of older investment treaties by consent may also be appropriate in some cases.

Promoting and enabling responsible business conduct

Promoting and enabling RBC is of central interest to policy-makers wishing to attract and keep investment and ensure that business activity contributes to broader value creation and sustainable development. RBC expectations are prevalent throughout GVCs and refer to the expectation that all businesses – regardless of their legal status, size, ownership structure or sector – avoid and address negative consequences of their operations, while contributing to sustainable development where they operate. RBC is an entry point for any company that wishes to contribute to the SDGs or to achieve specific economic and sustainability outcomes.

The COVID-19 crisis has exposed significant vulnerabilities in company operations in global value chains, including as related to disaster preparedness and supply chain continuity and resilience. Evidence has already shown that companies that are responsible are better able to respond to COVID-19. An RBC lens can help them make more balanced decisions, while ensuring that they do not create further risks to people, planet and society – or contribute to further destabilising supply chains down the line. Promoting and enabling RBC as part of overall COVID-19 policy responses will be essential for ensuring coherence between their government recovery policies and their expectations of how businesses should contribute in this regard.

Thailand is a regional leader on RBC

Several initiatives have been implemented over the course of the last few years. Notably, in 2019, Thailand became the first country in Asia to adopt a standalone *National Action Plan on Business and Human Rights (2019-2022)* (NAP). The Thai NAP outlines four key priority areas, namely actions to address 1) labour; 2) community, land, natural resources and environment; 3) human rights defenders; and 4) cross-border investment and multinational enterprises. It also envisions an implementation plan and indicators for monitoring and evaluation. This is a significant achievement to promote RBC in Thailand and among Thai enterprises operating domestically and abroad (Chapter 9).

Thailand has also promoted RBC in other ways. For example, several stakeholders in Thailand promote sustainability and corporate social responsibility (CSR) awards. Additionally, the National Human Rights Commission of Thailand (NHRCT) has played a critical role by raising the visibility of the complaints received in the business and human rights field and by organising awareness raising events and workshops. The government has also taken steps to promote RBC among Thai state-owned enterprises (SOEs), with SOEs being directed to follow RBC standards and practices. There have also been sector or thematic policy commitments, such as in fishing where Thailand was the first country in Asia to ratify the ILO Work in Fishing Convention. The Securities and Exchange Commission (SEC) was an early champion of sustainability, notably connecting the topics of corporate governance, ESG, sustainability, and anti-corruption, in the Sustainability Development Roadmap which was adopted as part of the SEC Strategic

Plan 2013-2015. The SEC Strategic Plan 2020-2022 addresses the importance of sustainability as one of its five priorities.

RBC-related activities in Thailand have also been undertaken by the private sector and civil society. Businesses spearheaded the creation of the Thailand chapter of the UN Global Compact Network in 2016, which in 2019 counted 46 members. Businesses and business associations, including the Joint Steering Committee on Commerce, Industry, and Banking, Federation of Thai Industry, Thai Bankers' Association and Stock Exchange of Thailand organised awareness raising events and workshops to familiarise businesses with international standards on RBC and to engage in the process of developing the Thai NAP.

Policy direction

While the efforts by the Thai government to set RBC policy direction are commendable, the real test will be in implementation. It will be crucial that the gains are not lost in light of the COVID-19 crisis. Building on the support for the NAP and the swell of support for RBC, Thailand is in a unique position to promote bold and consistent implementation of RBC principles and standards across the economy.

Short- and medium-term policy priorities

- Support, enable and promote RBC due diligence among businesses throughout the economy. Explicitly promote broad dissemination and implementation of due diligence in accordance with the OECD *Due Diligence Guidance for RBC,* including efforts at the provincial level. The *Guidance* is a practical tool to implement the due diligence expectations as set out in the ILO, OECD and UN instruments, including the UN *Guiding Principles on Business and Human Rights*.
- Provide and communicate clear expectations to businesses on RBC standards for outward Thai investments in the services provided for investors, in collaboration with BOI, the Federation of Thai Industries and the Board of Trade, EXIM Thailand and the SEC. These services include organising overseas business visits, business seminars and dialogue with business associations of other countries. The information and expectations should also be integrated in BOI’s Thailand Overseas Investment Centre and the Thai Overseas Investment Promotion Department (Chapter 11). Assess whether further alignment in risk management policies is necessary and whether specific due diligence requirements should be considered.
- Make RBC due diligence a standard operating procedure in the context of special economic zones and the EEC, including promoting transparency around selection of projects and the establishment and operations of zones, as well as meaningful stakeholder engagement with affected communities.
- Encourage and support implementation of RBC in the financial sector, including by promoting RBC due diligence in the operations of large institutional investors (such as the Social Security Fund), following the lead of the Thailand Government Pension Fund.

Long-term policy priorities

- Promote due diligence in the activities where the state is an economic actor. This includes procurement and activities of state-owned enterprises. Notably, due consideration should be given to how RBC expectations can be reflected in the implementation of the *Public Procurement and Supplies Management Act of 2017* and whether amendment is necessary. Additionally, the policy guidance for SOEs should be aligned with the 2015 OECD *Guidelines on Corporate Governance of State-Owned Enterprises*, and the specific expectation that SOEs establish and implement due diligence according to international standards should be made clear.
- Consider expanding the labour laws, regulations, and initiatives applied in the context of fisheries to other industrial sectors that have a large migrant worker population. Ensure that recent

protections for human rights defenders are implemented and consider whether further policy action is necessary. The role of non-judicial grievance mechanisms and alternatives means of dispute resolution should be considered.

Prioritising the promotion of green investment to achieve broader ambitions

Green growth and green investment will be key to meeting the vision for Thailand 4.0, especially in the context of COVID-19 recovery. A green growth pathway allows Thailand to grow and develop while ensuring that natural assets continue to provide resources and environmental services for future generations, and that growth pathways remain resilient to global shocks such as climate change or future pandemics. A key step in pursuing green growth is to catalyse investment and innovation in environmentally sound technologies and infrastructure which helps to sustain growth gives rise to new economic opportunities and creates jobs. In addition, with the increasing need for global action to address climate change, investment for green growth must promote a rapid transition to a low-emissions and climate resilient development pathway. Investment for green growth includes, among other things, investment in infrastructure – such as renewable energy, energy efficiency, water purification and distribution systems, transport and housing – as well as in conservation and efficient usage of natural resources, and waste management.

A green investment framework has much in common with a general policy framework for investment, but an investment-friendly policy framework does not necessarily result in green investment unless certain elements are also in place. These include: a strong governmental commitment at both the national and international levels to support green growth and to mobilise private investment for green growth; policies and regulations to provide a level playing field for more environment friendly investments, including through pricing instruments; policies to encourage more responsible business conduct, including promoting environmental due diligence; an institutional capacity to design, implement and monitor policies to foster green growth objectives; and financial mechanisms for green investment.

Thailand has a good policy framework for green growth

Thailand's vision of transitioning into an innovation and technology driven economy, especially through its BCG economy model, will not be achievable without significant progress towards green growth. This is especially relevant in the context of post-COVID recovery, where Thailand must restart its economy and create local employment, while ensuring underlying growth drivers remain resilient to future shocks. The major gains made in growth and development in the last few decades were accompanied by the unsustainable and unchecked use of resources, which in turn has hampered the country's efforts to promote environmental sustainability. Rapid urbanisation, industrialisation and infrastructure development have exacerbated air and water pollution, with Bangkok recording hazardous levels of air pollution in the last two years. Thailand generates significant waste, and a lack of adequate waste management continues to result in plastics dumping and pollution in water bodies. Climate change exacerbates existing environmental issues, with Thailand highly vulnerable to changing temperature and rainfall patterns. Increasing greenhouse gas emissions from the use of fossil fuels will need to be checked.

Recognising these challenges, Thailand has made strides in developing a comprehensive and consistent policy framework for green growth and environment and in promoting green investment (Chapter 10). The BCG economic model puts green growth-related concepts at the heart of continued development. Green growth is reflected in Thailand's development strategies, and consistent climate mitigation targets are in place. Thailand's policy framework for environmental protection has a long history of implementation, and investment incentives have been put in place to promote investment in green sectors and activities. In the energy sector, Thailand is a regional success story in promoting private investment for renewable energy, and has used public finance strategically to mobilise commercial financing for green investments.

Implementing and strengthening the policies on green growth is already a priority

Key to this will be ensuring that environmental objectives are systematically integrated across Thailand's broader policy framework for investment, and misalignments in Thailand's policies need to be addressed. Some of the proposed action can be addressed unilaterally by relevant agencies (short- and medium-term priorities), while others require longer term and inter-ministerial coordination.

Short- and medium-term policy priorities:

- Consider scaling down or phasing out investment incentives for 'non-green' activities such as the manufacturing of non-biodegradable plastics or generation of electricity using fossil fuels. Providing incentives to both green and non-green activities reduces the ultimate effectiveness of efforts to promote green investment. For example, gains made by promoting investment in green sectors, such as the manufacturing of biodegradable plastics or generation of renewable energy, are offset by promoting investment in non-biodegradable plastic packaging or coal-fired power. A possible first step could include a mapping of green and 'non-green' activities building on emerging taxonomies for green finance.
- Assess the applicability of creating targeted financing vehicles to mobilise financing for green investment beyond the energy sector, building on lessons learned from the Energy Efficiency Revolving Fund. Thailand has had success with using budget funds in specialised structures to encourage local banks to engage in green lending for energy, and such experience could be built on to promote green lending for waste, water, and transport projects.

Long-term policy priorities

- Establish a legal system and framework for the application of Strategic Environmental Assessments and stakeholder consultations, so that environmental considerations can be systematically integrated along with social and economic issues in policy planning and decision making related to sectoral or geographical issues. This can also help avoid downstream conflict with local communities and other actors during the project impact assessment stage. When it comes to private sector involvement, require risk-based responsible business conduct due diligence according to international standards such as the OECD *Due Diligence Guidance for Responsible Business Conduct*.
- Consider introducing pricing instruments, such as an environmental or 'green' tax, to put a price on pollution and incentivise efforts to increase the efficiency of resource use. Such instruments are considered key to green growth policies globally, and help to shift producer and consumer behaviour towards more environmentally beneficial activities. These taxes are prevalent across most OECD countries, with environmental tax revenues estimated to represent, on average, 2% of GDP across OECD member countries. Thailand should also continue its efforts to develop other pricing instruments by scaling up recent pilots to establish an emissions trading system.
- Develop a roadmap to support greening of the national financial system, including the tracking and disclosure of ESG risks. Building on the new roadmap on sustainable capital markets, Thailand should continue to invest in building a cohesive framework, through its sustainable finance taskforce and working group, bringing together the financial sector, the insurance sector and listed companies, to encourage a more targeted performance on green finance and the SDGs. While efforts to establish a system for green bonds are beginning to pay off, a national standard or taxonomy, based on the ASEAN Green Bond Framework and national guidelines, could add further transparency for issuers and investors. Lessons can be learned from the EU Action Plan on Sustainable Finance which lays out a roadmap for greening EU's financial system, including a taxonomy, labelling for financial products and measures to increase the transparency of reporting. Another example is China's guidelines for establishing a national green finance system, which

includes a classification of eligible activities and promotes clear reporting of green credits, among other measures. OECD tools for responsible business conduct in the financial sector can be useful for these efforts.

Developing and implementing a policy framework for outward investment

Outward investment has become an important pillar of Thailand's economy, as outward flows have surpassed inward flows in recent years. OFDI can increase Thailand's competitiveness and is central for long-term growth, GVC integration and sustainable development. Outward investments allow firms to grow by tapping into new and potentially larger markets abroad. Outward investors can improve competitiveness by shifting operations that are no longer competitive at home to neighbouring countries, for example due to rising labour costs, or remaining preferential import duty regimes for exporters from neighbouring CLMV countries which are no longer available for Thai exporters. Investors can also access technology and knowledge that may not be available in home markets and thereby contribute to the development of activities and industries targeted under Thailand 4.0. These positive effects benefit OFDI firms themselves, but benefits can also spill over onto the home economy more broadly. The positive impacts of OFDI on the home economy can positively contribute to the economic recovery in Thailand. The global economic crisis related to the COVID-19 pandemic is expected to cause Thai OFDI to fall in the short-run. As economic recovery is expected to begin at different paces in various economies, delayed OFDI projects may resume.

Considerations to develop an OFDI policy framework for Thailand

Public policies can play an important role in influencing firms' decisions to invest abroad. Governments can support FDI outflows both through dedicated OFDI support measures (e.g. loans and grants for outward investors, investment insurance as well as technical and information services) and, more implicitly, through wider policies that support economy's internationalisation (such as capital flow liberalisation and trade policy). Dedicated OFDI policies can reduce the costs and risks associated with investment projects, making venturing overseas more attractive. Dedicated OFDI policies that should be prioritised depend on the intended policy objective, as is the case for inward FDI.

In Thailand, several public institutions[4] are involved in OFDI related policies and OFDI is a strategic priority in Thailand's National Economic and Social Development Plan 2017-22 (Chapter 11). While Thailand's current institutional and policy setup is likely to enable further OFDI growth, a number of short-, medium- and longer term policy considerations can be made that would enable a strong and targeted OFDI policy framework better supporting Thailand's development ambitions.

Short- and medium-term policy priorities:

- Strengthen the OFDI policy framework through inter-agency coordination. Thailand has a comprehensive policy package on OFDI which ranges from (1) continued capital account liberalisation, (2) good coverage of investment treaties and double taxation agreements, (3) the availability of financial and insurance instruments to protect and incentivise investments, to (4) the provision of informational services and technical assistance for smaller firms intending to venture into foreign markets. OFDI's concrete contribution to strategic policy objectives under the 2017-22 plan and Thailand 4.0 is still not well defined and, in some cases, agencies have overlapping roles. An inter-agency committee, chaired by one or several state agencies, could be mandated to formulate strategic OFDI objectives, clarify roles and align reform priorities across government bodies. A clear and coordinated policy message is increasingly important in light of COVID-19 uncertainties.

- Conduct a comparative review of OFDI policy frameworks and governance in other relevant outward investing countries (such as Japan and Korea). Such a review would help define and prioritise OFDI policies in Thailand.
- Clarify policy approaches for two distinct sets of OFDI priorities in support of Thailand 4.0 ambitions. Thailand 4.0 aims to (1) enhance productivity and competitiveness of selected high-tech industries and (2) boost technological and innovation capacity, including in new industries. On the one hand, OFDI can support the relocation of labour-intensive, lower skill production stages to lower cost neighbouring countries (particularly CLMV). This liberates resources for higher value activities at home and enhances overall competitiveness of the investing firm. This type of OFDI has increased importantly in recent years. On the other hand, OFDI has a potential role in acquiring brands, knowledge as well as new technologies and innovation capacity. Acquisitions of high-value assets abroad are not yet picking up in Thailand. It is important to distinguish the two sets of OFDI priorities and then engage in the discussion and formulation on respective – and potentially varying – investment promotion activities.

Long-term policy priorities:

- Increase resources dedicated for OFDI information services and technical advice and align efforts across government and private actors. The assessment in Chapter 11 shows that Thai firms are sometimes not aware of public and private services providing assistance on OFDI projects. The BOI reports that their efforts remain limited due to resource constraints, including with respect to staff, and their role vis-à-vis other agencies such as the Department of Trade Promotion is not fully clear. OFDI information services and technical advice are revealed to be essential in Thailand's efforts to enhance OFDI and competitiveness. Providing up-to-date OFDI information will be particularly important as COVID-19 recovery policies are put in place to stimulate new investments. The government could consider expanding resource allocation with respect to these services while aligning efforts across government and private actors.
- Augment OFDI technical advice with services related to RBC supply chain due diligence. Under the OECD *Due Diligence Guidance for Responsible Business Conduct,* enterprises are subject to the same expectations with respect to RBC when operating in their home country or overseas. Capacity building and training on RBC supply chain due diligence could be introduced as part of information and technical advice services (Chapter 9).
- Design and implement a policy package dedicated to promoting OFDI in high-value assets in advanced economies, potentially including financial instruments. Thai firms are currently not investing much in foreign assets that could support their transition towards higher value added activities and facilitate the development of their domestic capabilities. Few firms are acquiring assets in technology, R&D or high value brands. Thailand's 2017-22 plan recognises the need to boost OFDI in such assets but does not clarify what policy instruments are dedicated to it. Various state institutions provide financial incentives (such as loans) and investment risk insurance. These incentives (and potentially even OFDI tax incentives which are currently not available in Thailand) could play an important role in promoting investments into high-value and high-risk assets. The government could use available policy instruments to develop a package of targeted support mechanisms and incentives dedicated specifically to OFDI in high-value assets. A pre-requisite for the success of such a policy package would be an assessment of the experience of peer and more developed OFDI investors, including in the OECD.

Notes

[1] While this Review focuses on an enabling environment for investment, it does not specially discuss competition policy even if this policy area requires attention for reform and improving the business climate in Thailand. Recent OECD research examines competition policy in Thailand, with a particular focus on the logistics sector.

[2] With the creation of MHESI, STI has been replaced with Office of National Higher Education, Science, Research and Innovation Policy Council (NXPO).

[3] The MHESI combines higher education policy, previously under the Ministry of Education, with science and technology policy under the former Ministry of Science and Technology.

[4] The Bank of Thailand regulates capital outflows. The Ministry of Commerce is in charge of negotiating free trade agreements, the Ministry of Foreign Affairs is in charge of negotiating investment promotion and protection agreements (Chapter 7 and 8), and the Board of Investment (BOI) carries out OFDI promotion and facilitation policy. The BOI focuses on outward investment in ASEAN and other targeted countries, while the Department of International Trade Promotion (DITP) offers indirect support i.e. providing information through the Office of Commercial Affairs abroad. The Ministry of Finance (Revenue Department) has the authority to grant tax exemptions on dividends from offshore investments, while the Export-Import (EXIM) Bank of Thailand provides loans and foreign investment risk insurance.

2 Thailand's development trajectory: Past and future strategies

The chapter provides an historical background of Thailand's development path and related strategies over the past decades. It makes special reference to the role of foreign direct investment (FDI), the integration in the global trading system and rising social and environmental pressures. The chapter describes Thailand's ambitious strategy for the future and how investment promotion and related policies are contributing to its implementation. The chapter also describes how the emerging global economic crisis related to the COVID-19 pandemic could affect Thailand's development trajectory and what support measures the government has introduced.

Summary

Thailand experienced rapid growth, at an annual rate of around 8%, before the Asian Financial Crisis in 1997. It recovered quickly from that crisis but economic expansion has remained more modest ever since. Despite slower growth in recent decades, per capita incomes have continued increasing due to fast demographic transition. Thailand joined the group of upper middle-income countries in the early 2010s.

Economic development has led by rapid urbanisation, coupled with the emergence of industrial hubs. Thailand's development model involved a long-term structural shift from agriculture to industry, enabled first by an import substitution policy and later by greater emphasis on export promotion and an investor-friendly industrial policy. Nonetheless, one-third of the population is still involved in agriculture and it remains important to ensure that an agrarian population, already the lowest income sector in the country, does not get left further behind. Their function remains important for the Thai economy, for example in respect of food security.

The emerging global economic crisis related to the COVID-19 pandemic is expected to bring this long period of growth to a sudden halt. The economy is predicted to contract by approximately 7% in 2020, with exports and FDI expected to slow even more. The government has introduced firm measures to address economic challenges for individuals, businesses and the economy more broadly, which total approximately 15% of GDP, among the highest in Asia.

Economic development has also brought some social progress to Thailand. Poverty rates, measured against the national poverty line, have decreased considerably from around 60% in 1990 to 7% today. Although access to basic education at primary and secondary levels is universal, there is a need to address the quality of education being provided. In particular, higher and vocational education needs to equip the workforce with skills required by industry and the emerging needs of the services economy. Social pressures remain significant particularly in poorer regions, where precarious employment conditions are omnipresent, despite some improvements over the past decades. The COVID-19 outbreak is putting new stress on income and wealth inequalities in Thailand. Both the 1997 and 2008 crises have led to increased unemployment and income inequalities and are likely to spike once more.

Rapid economic growth in Thailand has also led to significant use of natural resources, resulting in rising environmental challenges. Thailand suffers from frequent and severe floods and droughts, causing loss of life and significant economic disruption. Air and water pollution remain severe problems, particularly in industrial zones. Carbon dioxide (CO_2) emissions have increased rapidly but remain below the OECD country average.

Thailand's strategy for the future

Thailand aspires to graduate from an upper middle-income to high-income country by 2037, along with improved security and inclusive and sustainable development, as outlined in the 20-year national strategy (2018-37). With its recently introduced Thailand 4.0 vision, the government would like to achieve its 20-year strategy through economic upgrading toward a value-based, innovation driven economy away from the production of commodities and low value added manufacturing.

Thailand's vision will not be achievable without progress towards environmental sustainability and socially inclusive growth benefiting all parts of society and regions, consistent with Thailand's long-standing 'Sufficiency Economy Philosophy' prioritising economic self-reliance for all. Thailand therefore introduced the Bio-Circular-Green (BCG) economy model in 2019, involving a strategy and reform agenda on how to achieve the Thailand 4.0 vision and long-term objectives related to the Sustainable Development Goals (SDGs). Investment promotion and facilitation efforts, led by the Board of Investment (BOI) and coordinated with other public and private agencies, play an essential role in these ambitions. The current investment promotion scheme aims to promote innovation and productivity-enhancement, improve human capital and develop targeted areas, particularly the Eastern Economic Corridor (EEC). While the COVID-19 crisis could slow the speed of progress towards Thailand's ambitions, the focus on an inclusive and sustainable development pathway needs to be upheld during the crisis as well as its recovery.

Lasting growth despite economic and political turbulence

Thailand's orientation to a liberal market economy was established during the Cold War when the US provided extensive military support to Thailand to reduce the spread of communism in the region (Baker and Phongpaichit, 2014). After the departure of the US military from Southeast Asia in the 1970s, there was an initial period of economic and political adjustment in Thailand, although Thailand soon benefited from the Asia-wide economic boom led by Japan and the East Asian 'Tiger' economies (Hong Kong China, Singapore, South Korea and Chinese Taipei).

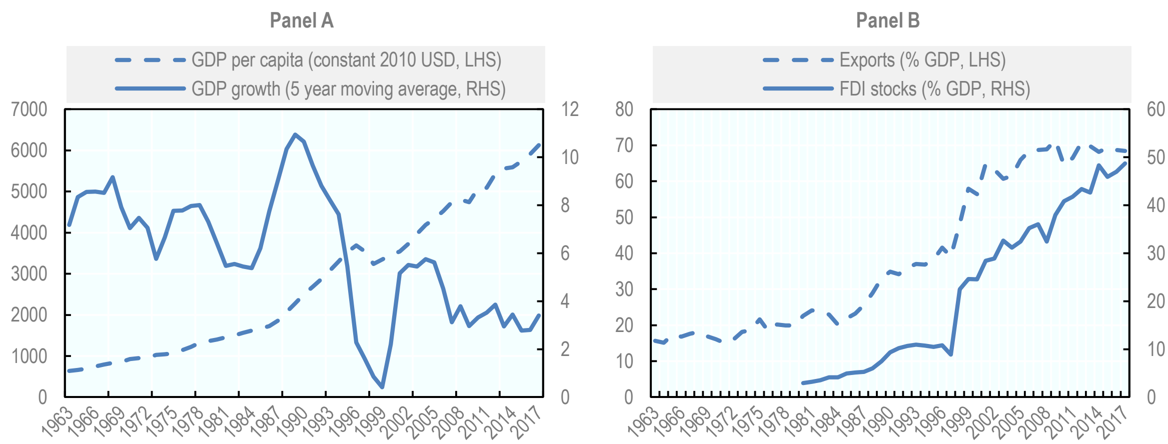
The pace of economic transformation accelerated over the last quarter of the 20th century. Thailand was one of the world's fastest growing economies before the Asian Financial Crisis in 1997 (Figure 2.1, Panel A). Very high real growth rates at around 8% were maintained without a single year of negative economic growth despite occasionally high world interest rates, oil shocks, and cyclical declines in demand for Thai exports. By 1997, the economy was more than 10 times as large as in 1960.

Thailand recovered quickly from the 1997 crisis, although growth has not reached pre-crisis levels. In the early 2000s, annual growth was around 5% and has since slowed to rates closer to 3%. Despite slower growth over the past two decades, per capita incomes have continued growing steadily due to a rapid demographic transition as a result of birth control campaigns, rising prosperity and delayed childbearing for education and careers (Figure 2.1, Panel A), enabling Thailand to join the group of upper middle-income countries in the early 2010s. Recent economic development of Thailand has occurred in parallel with recurring political change and uncertainty.

Since the mid-1970s, the economy and society has shifted from rural to urban and from parochial to open and globalised. Bangkok dominated the urbanisation process, growing to over 10 million by the 2000s. With urbanisation, industrial hubs have developed in and around urban centres. The Thai economy has transformed away from agriculture and into industry since the 1980s. While the contribution of agriculture to GDP was three times that of manufacturing in 1960, it was less than one third as important as manufacturing in 2017. Nonetheless, one-third of the population is still involved in agriculture and it remains important to ensure that an agrarian population, already the lowest income sector in the country, does not fall further behind. Their function remains important for the Thai economy, not least for food security. With industrialisation, Thailand has become a major exporter of manufactured goods, rising from only one third of total exports of goods in 1980 to over 80% today. The share of exports in GDP has grown from 20% in the 1980s to almost 70% today (Figure 2.1, Panel B).

Thailand would need to further develop its services sector to advance development. Services have been responsible for approximately 55% of GDP since the early 1990s, with a somewhat lower share in the early 2000s. This share corresponds to those seen in other upper middle-income countries, but is considerably below services shares in more developed countries. Thailand does have a comparative advantage in services related to tourism, including health-related tourism which generates relatively higher value added, but Thailand could further develop its ICT, financial and other business services as well as transport (Chapter 3). These services are all important inputs into advanced manufacturing production and enable growth in advanced and modern economies.

Figure 2.1. Thailand's economic growth has been enabled by exports and FDI



Source: OECD based on World Development Indicators.

Foreign direct investment (FDI) has played a key role in the industrialisation process. FDI in Thailand was dominated in the early period by US firms (OECD, 1999), but over the 1980s, Japanese investment exceeded that from the United States by approximately three times. Some investment involved Japanese companies in tariff-jumping projects to assemble automobiles and household goods from imported components for domestic sale, but foreign investment in the automobile, electronics as well as textile sectors also enabled rising exports in those sectors. FDI's share in GDP increased to 50% by 2017 (Figure 2.1, Panel B). Investment was still dominated by Japanese manufacturing investors, but with rising shares of other investors from both within the ASEAN region, mostly Singapore, as well as outside, for example China and Europe.

The emerging global economic crisis related to the COVID-19 pandemic could slow progress towards Thailand's ambition to become a high-income, innovation-driven country by 2037. The government predicts the economy will contract by 5.3% in 2020 (Bank of Thailand, 2020), in line with estimates by the World Bank (3-6.8%) and the International Monetary Fund (6.7%) (Maliszewska et al., 2020; and IMF, 2020). All estimates find Thailand's economy to be the most affected in Southeast Asia.

Thailand relies extensively on trade and investment in global value chains (GVCs), which have come to a sudden halt in many sectors earlier in 2020 as a result of the COVID-19 outbreak. Thai exports may fall by as much as USD 22 billion in 2020, with the biggest impacts on exports of manufacturing goods and (travel) services and very little impact on agricultural goods or natural resources (Maliszewska et al., 2020). Likewise, FDI is set to fall in 2020 by more than 30% globally and is likely to affect developing countries, including Thailand, relatively more given their exposure to crisis-affected manufacturing sectors (OECD, 2020a). Cross-border M&A deals and announced greenfield FDI in Thailand dropped considerably in the first months of 2020 compared to the previous years (Chapter 4). With much of the world having entered full or partial lockdown in March, the downward trend is likely to have been magnified since.

Some experts have suggested that complex GVCs might be less robust in the crisis, possibly due to additional risks and costs related to international trade.[1] This outcome is unlikely in Thailand. There is no relationship between the level of fragmentation of Thai production (complexity of sectoral GVCs) and the severity of the economic impact of COVID-19; not only because of services activities but also among manufacturing industries. Additionally, Thailand's past experience of severe floods in 2011, which also resulted in a sudden supply shock, may provide some hope that Thailand's GVC integration is quite resilient – even if not always robust. Key producers relaunched and expanded operations in Thailand soon after the floods in 2011 (Miroudot, 2020).

Social pressures persist but have been improving

Economic development over the past decades has also brought social progress. Measured against the national poverty line, poverty has considerably dropped from levels of around 60% in 1990 to 7% today. Thailand provides almost universal access to basic education at the primary and secondary levels, but despite relatively high levels of public expenditures on education (4% of GDP), the quality of basic education can be significantly improved relate to global benchmarks. Higher and vocational education needs to equip the workforce with skills required by the industry and the emerging needs of the services economy (Chapter 3).

Social pressures remain significant, particularly in poorer regions. While the number of workers in precarious employment conditions fell from around 70% in the 1970s to 50% in the mid-2000s, improvements have stagnated since then, reflecting a high share of low-income agricultural workers and significant urban informality. Today, only one in ten Thai citizens say that they can live comfortably with their current income (OECD, 2018). Bangkok has been the driver of Thailand’s economic transition, and is therefore more developed than the Northeast, North, and South regions.

As the labour market tightened in the early 1990s, the borders were implicitly opened to admit labour migrants from neighbouring countries, mostly Myanmar. Today, almost 10% of the labour force or 3.5 million are low-skilled migrant workers employed predominantly in agriculture, fishing, construction, domestic services, manufacturing and retail. Many of those migrant workers, but also many low-skilled Thai workers, have informal work arrangements and are paid below the minimum wage without unemployment protection. The latter is reserved to employees in the formal sector. More recently, basic social protection has improved in some areas: the 2002 universal health coverage scheme and the 2009 universal allowance for elderly provide access to services for all, including those in the informal sector.

Significant informality among migrant workers also results in persistent problems in other areas of responsible business conduct (RBC), including with respect to human trafficking and forced labour, especially in the commercial sex industry and domestic work sector but also in the fishing industry. The government’s efforts have been strengthened more recently with enhanced inspection frameworks, improved laws and increased penalties in case of abuse (HRW, 2018). Thailand is the first Asian country with a National Action Plan on Business and Human Rights, whose implementation is supported by the OECD and ILO (Chapter 9).

The COVID-19 outbreak is putting new pressure on income and wealth inequalities in Thailand. Both the 1997 and 2008 crises led to increased unemployment and income inequalities and these are likely to spike once more. Significant job losses are already being reported by the Department of Employment (Asadullah and Bhula-or, 2020). People with informal and precarious employment conditions, including those with small family businesses, are most affected. The government has introduced important measures to address economic challenges facing households (see Box 2.1).

Environmental pressure remain important

As in many emerging economies, rapid economic growth in Thailand has come with a significant use of natural resources, resulting in rising environmental challenges (Chapter 10). The natural environment is the foundation of key economic sectors and millions of livelihoods in Thailand. Careful use and protection of environmental resources are therefore crucial and have become a priority in Thai policies since the 1990s (OECD, 2018). Thailand is exposed to frequent and severe floods and droughts that have caused loss of life and significantly disrupted the economy. While some of these outcomes are due to Thailand’s general climatic exposure, urban expansion, intensive agriculture and the deterioration of watershed forests have made Thailand more vulnerable to flooding. Moreover, high water consumption, agricultural and industrial land development and urbanisation have contributed to droughts.

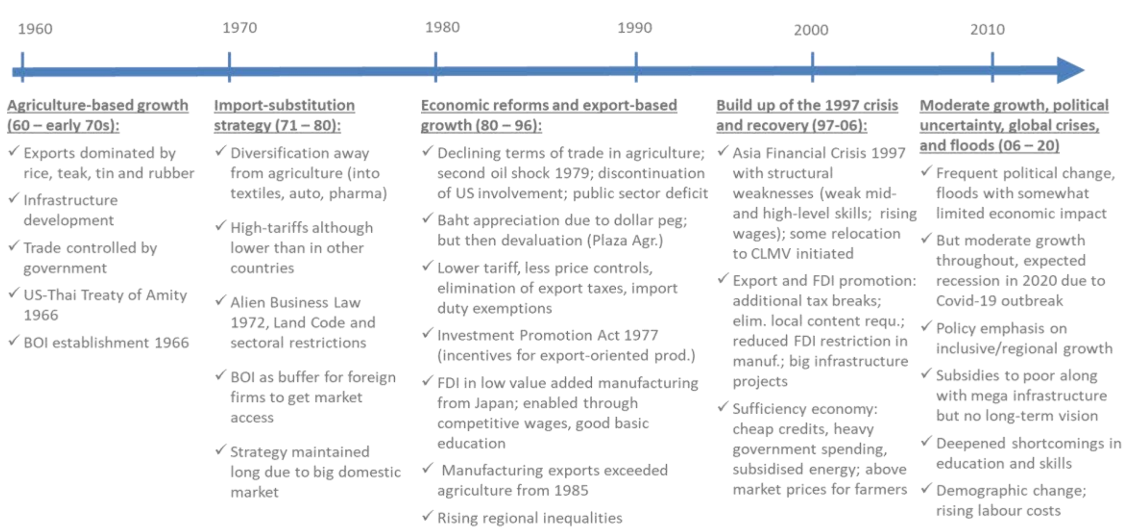
Air pollution has been worsening since 2010 after some improvements during the previous two decades. The problem is particularly severe in industrial zones, where air pollution is often above safe limits. Similarly, one-quarter of surface water is assessed as poor quality, with some reported improvements over recent years. Progress is held back by a shortfall in wastewater treatment facilities, poor compliance with existing regulation and an absence of financial disincentives to pollute. Moreover, the quantity of solid waste is increasing rapidly, almost half of total solid waste is disposed of through open burning or illegal dumping, putting additional pressure on environmental assets (OECD, 2018).

Carbon dioxide (CO_2) emissions have increased rapidly with economic growth. Over 1990-2015, absolute carbon emissions increased from 80 million to 244 million tonnes per year, more than doubling in per capita terms – although still well below the OECD country average. Thailand has ambitious plans to reduce greenhouse gas emissions – up to 20-25% by 2030 under current projections (ONEP, 2015). The energy and transport sectors are identified as the key sectors for mitigation efforts. In order to achieve targets, some features under current energy plans may need to be adjusted. For example, it is currently planned to increase the share of coal in the energy mix which could challenge carbon emission reduction efforts (MOE, 2016). The planned transition from fossil fuels to renewable energy is now being challenged by the unprecedented health emergency and economic crisis trigged by the global COVID-19 outbreak. The collapse in oil and gas prices and decline in coal prices may reduce support for renewable energy.

Thailand’s development strategy since the 1960s

Embedded in 5-year development plans since the early 1960s, Thailand’s macroeconomic policy has been relatively stable over the past decades despite frequent changes in government (Figure 2.2). Thailand followed a development model like many in Asia and elsewhere, involving a long-term structural shift from agriculture to industry. The shift from an import substitution policy to greater emphasis on export promotion was essential for the rapid growth of manufacturing production and exports. Nonetheless, the export boom came slightly later with more favourable exchange rate policies and an investor-friendly industrial policy. More recent development policies have emphasised inclusive and sustainable growth, but challenges remain particularly in light of the emerging global crisis due to the COVID-19 outbreak.

Figure 2.2. Thailand’s development trajectory: 1960-today



Source: Based on OECD research (see text in this chapter).

Agriculture-based growth (1960 – early 1970s)

As many developing countries, Thailand traditionally produced and exported primary and agricultural products. The industrialisation process, mostly of textiles and garments, started during the 1960s, but high growth rates at around 8% were importantly driven by exports of agricultural products. Rice, teak, tin and rubber were responsible for more than 80% of total exports in the 1960s (OECD, 1999).

The government focused on developing economic infrastructure, including roads, dams and water reservoirs, and on diversifying agricultural production. International trade was controlled by the government: for example, rice exports were controlled by a state monopoly and discouraged by significant export taxes. During this period, the government initiated support for the industrialisation process with the establishment of the Board of Investment (BOI) in 1966. Attempts at more inclusive and broad-based development were made by decentralisation of education, but the gap in the quality of education between urban and rural areas remained significant. The 1960s was a period during which Thailand had a strong alliance with the United States, both economically and through military support and funding. The US-Thai Treaty Amity was signed in 1966 and exempted US investors from many of the restrictions foreign MNEs from other countries were soon facing and to some extent are still facing today.

Import-substitution strategy (1971 – 80)

In the early 1970s, the government strengthened its industrialisation efforts and adopted an import-substitution strategy, common in many developing countries at the time. The objective was to limit the dependence on imported goods, save foreign exchange, increase domestic value added and diversify away from agriculture. The industrial policy prioritised large-scale producers in capital-intensive industries, mainly textiles, automobiles and pharmaceuticals. Import tariffs remained modest compared to other countries (30-55% for consumer goods), but still included very high tariffs above 90% on some categories, including on automobiles. Import-substitution started on consumer goods but then also moved to capital and intermediate goods.

Foreign investment was regulated by the Announcement of the Revolutionary Council 1972 (ARC. 281), the Land Code and other sectoral restrictions. Foreign participation was restricted across agricultural, industrial and services sectors (Chapter 6). The Alien Business Law (ABL) served to protect industries where Thailand already had domestic capabilities, while providing market access to foreign firms in sectors where foreign capital was needed for their development, e.g. textiles and automobiles. The BOI served as a buffer, that is, foreign firms would get access to the Thai market in some sectors if they were promoted by the BOI after initial screening. American firms were mostly excluded from restrictions due to the Treaty of Amity, except for certain specific sectors.

Although import substitution was questioned by leading banks and businesses with some support of technocrats in the National Economic and Social Development Board (NESDB)[2] early in the 1970s, little was done to move away from import substitution towards export promotion. The Ministry of Finance, the military and protected firms built a strong lobby against a policy shift. The strategy could be maintained for a relatively long time in Thailand given the extensive domestic market which delayed market saturation, rising world agricultural prices, and extensive inflows of foreign capital that softened the first oil shock and eased the balance of payments position.

Economic reforms and export-based growth (1980 – 96)

Towards the end of the 1970s a number of problems arose and meant that the import-substitution strategy could no longer be maintained. Declining terms of trade for agricultural products harmed the expansion of agricultural exports and increased pressure on the balance of payments. Furthermore, the second oil shock of 1979 and the discontinuation of US military aid put pressure on public sector finance and led to a rising public sector deficit. Thailand chose to continue pegging its currency to the US dollar after the collapse of the Bretton Woods system which proved costly for Thailand when the US dollar appreciated against other major currencies between 1978 and 1985. This resulted in rising interest rates, a sharp growth slowdown and consecutively a number of baht devaluations in the 1980s. This included the baht devaluation as a result of the Plaza Agreement 1985 which led to baht depreciation relative to the yen and deutsche mark due to its peg to the US dollar.

Along with the devaluations, the government moved towards an export promotion strategy. Protection was reduced by lowering tariffs, relaxing price controls and eliminating export taxes. Exports were further promoted by import duty exemptions on machinery and raw materials used for the production of exported goods. With 1977 Investment Promotion Act, BOI investment incentives were changed in order to favour export-oriented projects and the Bank of Thailand introduced special credit facilities for exporters. In general, macroeconomic policies became market-oriented with flexible exchange rates and few constraints on interest rates.

These depreciations and newly introduced export promotion policies made Thailand an attractive destination for export-oriented FDI after 1985. This was particularly the case for Japanese investments and those from some Newly Industrialised Economies, such as Chinese Taipei and Singapore, whose comparative advantage in low value added manufacturing disappeared in home markets. The government's early efforts to provide broad-based basic education also paid off during this period. Thailand was particularly attractive for Japanese investors due to the large pool of workers with basic education and skills and competitive labour costs. Nonetheless, two thirds of workers were still employed in agriculture in the early 1990s.

With these policy changes, manufacturing exports started to expand rapidly, with light manufacturing such as garments and leather products increasing its share. Manufacturing exports exceeded agricultural exports from 1985, although agricultural production and exports remained important. Over time, labour-intensive industries such as electronics assembly, footwear, as well as higher technology goods such as computer accessories and motor parts also gained importance in exports. The growth and export boom did not benefit different parts of the country evenly, however, as industrialisation was concentrated in Bangkok and neighbouring provinces

The build up to the 1997 crisis and recovery (1997 – 2006)

The Thai economy was seriously affected by the 1996 export slowdown, resulting from sluggish world demand for electronic and other goods. The slowdown was particularly strong in Thailand due to structural weaknesses. The economic boom did not produce an increasingly skilled workforce that could compete with workers from countries like Chinese Taipei or South Korea. Investment in educational infrastructure was not sufficient to prepare workers for higher value added activities. In 1997, for example, only 17% of Thais finished high school and Thailand had only 260 engineers per 1 million compared to 2500 per million in South Korea (Hays, 2014). Rising wages in Thailand were not matched with increases in productivity and Thailand had difficulty moving towards skill-intensive activities that would correspond to relatively higher wage levels. This caused many firms, both Thai and subsidiaries of foreign firms, to relocate to lower cost locations in neighbouring countries.

A number of other factors resulted in the currency crisis which started in 1997. The credit boom in the early 1990s gave rise to a financial and real estate bubble that made the economy vulnerable to a shift in business sentiment. The shift materialised as a result of the export slowdown and the attempt of the authorities to defend the exchange rate through very high interest rates. Foreign exchange reserves dwindled, which led to a collapse of the baht in mid-1997 together with substantial capital flight, causing a deep recession. Similar events subsequently happened in other emerging Asian economies, becoming known as the Asian Financial Crisis.

The economy recovered in the early 2000s as a result of a number of structural reforms and an accelerating global economy. The policy approach included two main strategies. On the one hand, the government promoted exports and FDI, with additional tax breaks to attract foreign investors, elimination of local content requirements and allowing full foreign participation in most manufacturing sectors, and the funding of key infrastructure projects such as Bangkok's new airport (Nikomborirak, 2004). As Thailand's comparative advantage in low cost, low value added manufacturing was fading with the rise of China, the objective was to focus on areas where Thailand had a comparative advantage, including in trade, food and tourism. On the other hand, economic self-reliance and increased consumption at home were fostered, including in less developed rural regions ('philosophy of sufficiency economy'). The government stimulated the economy with cheap credit, heavy government spending and subsidised energy, although fuel subsides were phased out after 2005. Taxes were reduced to induce more spending, and farmers were given above market prices for their crops. At the same time, and in order to prevent another crisis, more restrictions on foreign investors were imposed in some sectors, real estate developers were prevented from borrowing money from banks to buy land, and new laws controlled an overheating of stock markets. A national asset management company was established which took over bad loans from banks (Hays, 2014).

Moderate growth with political uncertainty and economic crises (2006 – 20)

Thailand has seen frequent political changes in recent years but with only limited apparent impact on the economy which has continued growing throughout the past two decades, albeit at lower levels than before the 1997 crisis, with growth sustained even during the global economic crisis 2008-09 and the massive flooding in 2011. The emerging global economic crisis related to the COVID-19 pandemic is expected to bring this long period of growth to a sudden halt. As discussed earlier in this chapter, the economy is predicted to contract by approximately 7% in 2020, where exports and FDI are expected to slow yet more (OECD, 2020d). The policy approach deepened its emphasis on inclusive and regional growth independent of the government in place. The policy tools used to support the poor also remained similar to previous periods, including cash hand-outs and rice subsidies until recently. In the early 2010s, significant spending in terms of subsidies to the poor along with mega infrastructure projects in transport, ports, energy and telecommunications increased public debt. Shortcomings in education and skills at all levels have not been resolved. Thailand needs to urgently address this issue, or it will be difficult to make significant progress in breaking out of the so-called 'middle-income trap' which challenges many middle-income developing countries.

Responding to the ongoing crisis, the government has introduced firm measures to address economic challenges for individuals, businesses and the economy more broadly, which total approximately 15% of GDP, among the highest in Asia (Ariyapruchya et al., 2020). These packages include soft loans and relaxed loan repayments, reduced social security contributions, and tax deductions for SMEs linked to employment retention. Other significant measures include a cash transfer of THB 5 000 per month for six months for informal workers not covered by the Social Security Fund as well as corporate income tax exemptions for five to eight years with a 50% corporate tax deduction for the following five years for companies that invest at least THB 500 million on approved large-scale projects in 2020 (Box 2.1).

Box 2.1. List of key government support measures for individuals, businesses and the economy to address the COVID-19 crisis in Thailand

- Third stimulus package of THB 1.9 trillion (USD 58.5 billion) aiming to help people and business as well as providing financial aid to farmers.
- Second stimulus package of THB 117 billion (USD 3.6 billion), including living subsidy of THB 5000 for six months, additional emergency loan, delay in income tax declaration, tax deduction on health insurance, tax exemption for medical personnel, soft loan of THB 3 million (USD 31 000), grace period for tax payment, THB 10 billion (USD 303 million) in soft loan to tourism sector.
- First stimulus package of THB 100 billion (USD 3.03 billion), including financial aid to SMEs, tax benefits, cash handout, soft loans to support low-income, farmers and SMEs.
- Reduction of policy rate from 1.25% to 1.00% in February, to 0.75% in March and to 0.5% in May.
- Measures to support market liquidity and providing liquidity backstop for market-based finance, include through Mutual Fund Liquidity Facility, Corporate Bond Stablilization Fund, and Government Bonds
- Measures to assist SMEs and households, including for example loan repayment measures to assist borrowers, a loan payment holiday of 6 months for all SMEs with credit line not exceeding THB 100 million, and soft loans to support liquidity for SMEs.
- Board of Investment (BOI) exemption on corporate income taxes for five to eight years, with a 50% corporate tax deduction for the following five years for companies that invest at least 500 million baht on approved large-scale projects in 2020; BOI additional benefits for companies that invest in the grassroots economy.
- Salary maintenance (45-50% up to THB 15 000); reduction in social security contribution from 5% to 4% and grace period for social security payment to July.

Source*:* Based on inputs from the Bank of Thailand in June 2020, OECD (2020b) as of 21 April 2020. OECD (2020c) provides more details on measures targeted to SMEs, as of 20 April 2020; Parpart, E. (2020) provides a more comprehensive list, as of 27 March. See Chapter 5 for further details on BOI measures related to COVID-19.

Thailand's strategy for the future

Towards a value-based and innovation-driven economy

Thailand's economic and social development since the 1960s has been based on 5-year development plans under the NESDC. A new Constitution was promulgated in 2017. It calls on the state to develop a long-term national strategy as a goal for sustainable national development to be used as the framework for future 5-year development plans and more targeted strategies and laws, implemented by specific line ministries. A key objective of the national strategy is to ensure continuity of economic and social policies for Thailand's future, independent of specific governments in place. The National Strategic Committee has been established in order to draft the 20-year national strategy (2018-37).[3]

The 20-year national strategy (2018-37) to raise Thailand from an upper middle-income to a high-income country by 2037 was approved by the National Legislative Assembly in 2018 (Sattaburuth, 2018). Its vision is to achieve prosperity, security and sustainability along Thailand's deeply embedded 'sufficiency economy philosophy' – introduced in the 9th National Economic and Social Development Plan (2002-06). Specific objectives aim to ensure national security, enhance competitiveness and upgrade Thailand's economic potential, improve human resources at all levels, enable economic opportunities and an equitable society, and foster environmental-friendly development (Vimolsiri, 2017). All government agencies must comply with the strategy and align master plans and budget allocations accordingly. Compliance is monitored by the National Strategy Committee, and the strategy will be reviewed every 5 years. The 12th National Economic and Social Development Plan (2017-21) translates the broad vision of the 20-year strategy into more concrete goals and reforms (NESDC, 2016).

In line with the legal and institutional framework under the 20-year strategy and the most recent 5-year development plan, the government has introduced the 'Thailand 4.0' development concept. Thailand 4.0 is a short-cut to Thailand's vision to become a value-based and innovation-driven economy and move away from producing commodities to promoting technology, creativity and innovation in focused industries and increasingly in services. It is Thailand's ambition of continuous development starting from 'Thailand 1.0,' which focused on the agricultural sector, to light industries with 'Thailand 2.0,' where Thailand benefited from low labour costs, through to 'Thailand 3.0,' which focused on more complex industries, attracted foreign investment and made Thailand a production hub for exports.

The Thailand 4.0 plan focuses on ten target industries, which can be divided into two groups.[4] The first group focuses on five existing industrial sectors with the aim to add value through advanced technologies: agriculture and biotechnology; smart electronics; affluent medical and wellness tourism; next-generation automotive; and food for the future. The second group includes five additional growth engines: biofuels and biochemical; digital economy; medical and healthcare; automation and robotics; and aviation and logistics.

Thailand's vision will not be achievable without progress towards environmental sustainability and socially inclusive growth benefiting all parts of society and regions, consistent with Thailand's long-standing 'Sufficiency Economy Philosophy' prioritising economic self-reliance for all. Thailand therefore introduced the Bio-Circular-Green (BCG) economy model in 2019. It involves a strategy and reform agenda on how to achieve the Thailand 4.0 vision and long-term objectives related to the Sustainable Development Goals (SDGs). While the potentially deep global economic crisis related to the COVID-19 pandemic could slow the speed of progress towards Thailand's ambitions, the focus on an inclusive and sustainable development pathway needs to be upheld during the crisis as well as its recovery.

Regional efforts to boost connectivity, trade and investment are key ingredients for Thailand's ability to implement its ambitious national development plans. The ASEAN Economic Community has been a catalyst for, and will continue to support, intra-regional investment. China's Belt and Road Initiative aims to build new roads, railways and ports across ASEAN (OECD-UNIDO, 2019). Increasingly strong political ties with China and concrete infrastructure development plans could help Thailand become a regional logistics hub and lower related costs. Strong cooperation with China is also strengthening Thailand's role in the implementation of the Master Plan on ASEAN Connectivity 2025 (ASEAN, 2016). Furthermore, the Regional Economic Comprehensive Partnership (RCEP) – a free trade agreement between the ten ASEAN member states and the five Asia-Pacific states with which ASEAN has existing free trade agreements (Australia, China, Japan, South Korea and New Zealand) – was signed in November 2020. International cooperation on trade and investment are key for a successful crisis recovery and continue to be important for sustainable development in Thailand.

Role of investment promotion and related policies

Investment promotion and facilitation policy plays an essential role in turning the ten target industries into Thailand's growth engines of the future. The current investment promotion scheme of the Board of Investment (BOI) runs from 2015 to 2021 and aims to enhance Thailand's competitiveness, overcome the middle-income trap and achieve sustainable growth; all in line with greater ambitions related to Thailand

4.0 and the 20-year strategy. Since 2015, the scheme has been augmented and more specifically tailored to higher level plans and strategies and the promotion of the 10 target sectors. Most recently, the BOI adjusted and expanded its services to support firms during the COVID-19 crisis (e.g. additional tax incentives) and attract investment into the health sector (Chapter 5).

Investment promotion policy focuses on four overarching objectives (described below and in detail in Chapter 5), and activities are complemented and to some extent coordinated with those of other ministries and state agencies (e.g. Ministry of Finance; Ministry of Commerce, Ministry of Higher Education, Science, Research and Innovation, MHESI; Eastern Special Development Zone Policy Office; Industrial Estate Authority; Ministry of Industry; and Office of Small and Medium Enterprises Promotion).

Promoting technology development and innovation

Thailand's investment promotion policy aims to attract investment into research and development (R&D) projects in the 10 target sectors and particularly in the area of four core technologies in which Thailand is considered to have the potential to enhance the country's overall competitiveness, namely biotechnology, nanotechnology, advanced material technology and digital technology (Chapter 5). Projects must involve a component on technology transfer by cooperating with educational and research institutions, for example via programmes of the National Science and Technology Development Agency or the Thailand Institute of Scientific and Technological Research, under MHESI. Technology-based projects can receive a corporate income tax exemption of up to 13 years from the BOI. If considered as high-impact investments under the newly enacted Competitiveness Enhancement Act 2017, tax exemptions may be granted for up to 15 years. Beyond programmes of the BOI and MHESI, other government agencies – such as the Revenue Department – are also providing support and incentives to improve innovation capacity.

Fostering productivity-enhancement

The BOI provides tax exemptions to enhance investments into specific productivity-enhancing activities within the ten target industries and services. More generous tax exemptions are provided for higher levels of technology and value creation within the supply chain. At the same time, the foreign investment regime remains rather restrictive in a number of services, despite the fact that Thailand 4.0 focuses on developing advanced services and services also play an important role in enabling higher value chain activities in manufacturing (Chapter 6).

Thailand's productivity ambitions can only be attained if public policies help to level the playing field for all types of firms. For example, all firms – independent of whether or not they are BOI promoted – should benefit from import duty reductions and may benefit from merit- or performance-based support (see policy directions provided in Chapter 5). It is of utmost importance to put the emphasis on SME upgrading, even if upgrading does not involve technology frontier-type of activities. BOI promoted firms may receive performance-based tax exemptions if they engage in developing and training local suppliers. SMEs themselves may receive specific information and technical support from the BOI, as well as from a number of other state agencies involved in the promotion and support of local firms and SMEs (e.g. the Ministry of Industry, or the Office of Small and Medium Enterprise Promotion).

Improving human capital

An important constraint for Thailand to become a knowledge-based and innovation-driven economy is its persistent gap in adequate skills, both vocational and higher level skills (Chapter 3). The Office of the Vocational Education Commission, along with programmes of the BOI and MHESI, have recently boosted efforts and programmes to increase both the quantity and quality of vocational skills and make technical training more attractive to Thai students. These programmes are increasingly developed and coordinated with the private sector and educational institutions. They often require students to combine practical training in companies with classroom education; an example is the Work-integrated Learning programme, introduced in 2012 by the National Science Technology and Innovation Policy Office.

With respect to higher level skills (e.g. researchers and engineers), the creation of the MHESI in 2019 and its determined reform agenda – including related to enhanced coordination and joint initiatives of government agencies, educational and research institutions, industry and the local community – is an essential step to address the skills and innovation challenge. The Thai government is also inclined to attract foreign talent to develop the ten target industries. For that purpose, the SMART visa programme has been designed to attract foreign science and technology experts, senior executives, investors and start-ups (see further discussion below and in Chapter 5). While this programme is useful to address an immediate challenge, broader alignment and reforms are required to facilitate entry of foreign workers and to produce required skills within Thailand.

Developing targeted areas with a focus on Eastern Economic Corridor

In recent years, a number of area-based schemes have been introduced to advance Thailand's economic development towards higher value added activities and expand socio-economic development to regional and local levels.

The BOI used a cluster-based policy in 2015-17 to promote business clusters that operate within concentrated geographic areas and function through interconnected businesses and related institutions. Cluster development was supported by government agencies in wide-ranging aspects, including human resources and technological developments, infrastructure development and logistics system, tax incentives and non-tax incentives, financial support, and amendments of rules and regulations to facilitate investment. It covered a broad range of provinces across Thailand and was grouped into so-called super-clusters (e.g. in automotive, electronics, petrochemicals, digital) that were relatively more supported, as well as other clusters (e.g. textiles and garments, and agro-processing). Investment uptake was relatively low under this policy (Rattanakhamfu, 2018).

With the introduction of the Thailand 4.0 narrative, area-based policies moved away from wide ranging cluster development across Thailand towards a geographically much more concentrated strategy, namely the EEC. The EEC strategy was introduced in 2016 and the EEC Act came into force in 2018. EEC receives high-level political endorsement: The EEC Policy Committee is chaired by the Prime Minister and the EEC Office is now an independent state agency with links to the Ministry of Industry. The EEC covers three neighbouring provinces Chachoengsao, Chonburi, and Rayong which are already key industrial hubs in Thailand and considered as the centre of the east-west economic corridor, boasting connectivity with the Indian Ocean, Pacific Ocean, Cambodia, Lao PDR, Myanmar, Viet Nam, and South China. In contrast to objectives for broad-based and regional development across Thailand, the EEC strategy aims to promote mainly investments in targeted core technologies, high-impact and strategic investments in line with the Thailand 4.0 and BOI policy. These include important infrastructure projects such as the dual-track railway, high-speed train, extensions of ports and upgrading of the U-Tapao international airport. The EEC strategy is supplemented by numerous ministerial projects, such as the EECi Innovation hub that fosters international innovation collaboration in target sectors and is governed by MHESI.

Thailand continues to promote inclusive growth through additional area-based policies, including the Border Special Economic Zone (SEZ) Development Policy, as well as promotional efforts in border provinces in Southern Thailand and in the 20 poorest provinces in the East and North of Thailand. In this context, the development of Border SEZs has received particular attention as a potential driver of regional development and was initiated in 2015, with a first phase in five provinces (Tak, Mukdahan, Sakaeo, Trat, and Songkhla) and a second phase in five additional provinces (Nong Khai, Narathiwat, Chiang Rai, Nakhon Phanom, and Kanchanaburi). Border SEZs are governed by the National Committee on SEZ Development (NC-SEZ) which is chaired by a member of the government, coordinated by NESDC and includes members from a number of line ministries. Targeted activities in SEZs include labour-intensive, light manufacturing (e.g. furniture, garments, agro-processing, plastic products), advanced manufacturing (e.g. medical devices, automobile parts, electronics) as well as logistics and tourism services. Investment projects in targeted activities may receive tax incentives from the BOI, or other tax reductions and non-tax incentives from the Revenue and Customs Departments. Special financial facilities for investment are available; and SME investors may benefit from additional benefits (such as lower minimal investment requirements) (NESDC, 2018; TDRI, 2015).

Broad-based economic and sustainable development across all regions is also being reinforced with the newly introduced BCG economic model. These efforts need to further ensure that protecting local communities' rights (e.g. over land acquisitions) is guaranteed and industrial practices are environmentally sustainable (Chapter 10).

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Notes

[1] https://www.wto.org/english/news_e/pres20_e/pr855_e.htm

[2] The NESDB has been renamed to National Economic and Social Development Council (NESDC) in 2018.

[3] The Committee includes the prime minister; speakers of the House and the Senate; a deputy prime minister or minister; the Defence permanent secretary; chiefs of the armed forces; the secretary general of the National Security Council; the chairman of the NESDC; heads of the Board of Trade, Federation of Thai Industries, Tourism Council of Thailand and Thai Bankers Association.

[4] The target industries are often called S-curve sectors, reflecting the speed of adoption of an innovation, where innovation leads to increasing growth at the beginning, then growth turns to maturity and declines subsequently (Jones and Pimdee, 2017).

3 A snapshot of Thailand's competitiveness

This chapter provides a snapshot of Thailand's competitive edge, with a focus on the four pillars targeted under the Thailand 4.0 vision: productivity, innovation, human resources and area-based development. It focuses particularly on competitiveness in targeted manufacturing activities and services, and related regional disparities. It further examines Thailand's innovation readiness and skills development. The assessment helps identify where development challenges may lie and policy efforts are needed.

Summary

Thailand's competitiveness moved from the production of agricultural to industrial goods between 1980 and the mid-1990s. This transition was accompanied by fast growth in labour productivity, at yearly rates often above 8%. Productivity has slowed in the past few decades, as Thailand no longer benefits from shifts of labour from agriculture to more productive manufacturing activities. Nonetheless, one-third of the population is still involved in agriculture and, as the government looks to Thailand 4.0, it remains important to ensure that an agrarian population, already the lowest income sector in the country, does not get left further behind. Their function remains important for the Thai economy, for example in respect of food security.

Competitiveness in labour intensive manufacturing is constrained by rising labour costs related to an ageing workforce and higher worker expectations. Rising labour costs have not matched with improvements in worker skills and the capability of firms to engage in higher value added activities in manufacturing and services. The Thai government confronts the competitiveness challenge with highly ambitious plans and programmes to enhance productivity of five existing and five new target sectors (including some services), boost innovation capacity and accelerate human resource development (Chapter 2). While competitiveness is a concern across all sub-national regions in Thailand, most efforts in terms of infrastructure development, incentives and knowledge centres are provided for the Eastern Economic Corridor (EEC) and the wider Bangkok area.

Thailand's productivity challenge might become yet more important as the world has moved into a global economic crisis related to the COVID-19 pandemic. There are a number of reasons why this crisis might further impair global and Thai productivity growth, including higher transactions costs, lower mobility, and a reduced scope of resource reallocation across firms, sectors, and countries. SMEs are likely to be the most affected, potentially increasing already severe productivity inequalities. On the other hand, innovations prompted by the need for new ways of working could generate a positive productivity impulse. While crisis implications on productivity should be taken into account for short and longer term policy priorities, it is important to take stock of Thailand's competitiveness even if it is based on pre-crisis data at the moment. Understanding Thailand's competitiveness will help identify structural strengths and weaknesses of the economy and inform policy directions during the recovery.

Thailand's labour productivity in targeted manufacturing and service sectors lags considerably behind levels in more advanced economies, despite some recent improvements. This is associated with persisting dominance of lower value added activities within targeted sectors. On the contrary, activities of strategic priority (such as manufacture of modern batteries, aircraft and spacecraft, bio fertilisers, or advanced business and IT services) are far from having a comparative advantage on international exporting markets. Research and development (R&D) has increased in recent years, resulting in a patenting surge of Thailand-based inventions, but total innovation output still needs enhancement in order to catch up with economies such as Malaysia and Singapore.

Competitiveness remains highly unequal across regions and provinces, with wider Bangkok and the ECC leading the way and reporting growing productivity in priority activities. Significant productivity disparities are also observed across foreign and large domestic firms as well as SMEs. Foreign firms are the most productive in all sub-national regions, closely followed by large domestic firms. SMEs are only half as productive as larger and foreign firms in wider Bangkok and EEC and the situation is more acute in less developed regions. Despite their competitive advantage, foreign and large domestic firms often consider labour shortages as a major constraint for their operations, which they increasingly address with in-house training. However, many of these firms still expect the government to increase efforts to provide adequate training and skills to workers in Thailand.

Policy directions

Based on the assessment in this chapter, a few policy directions can be derived. They will be discussed in details in subsequent chapters.

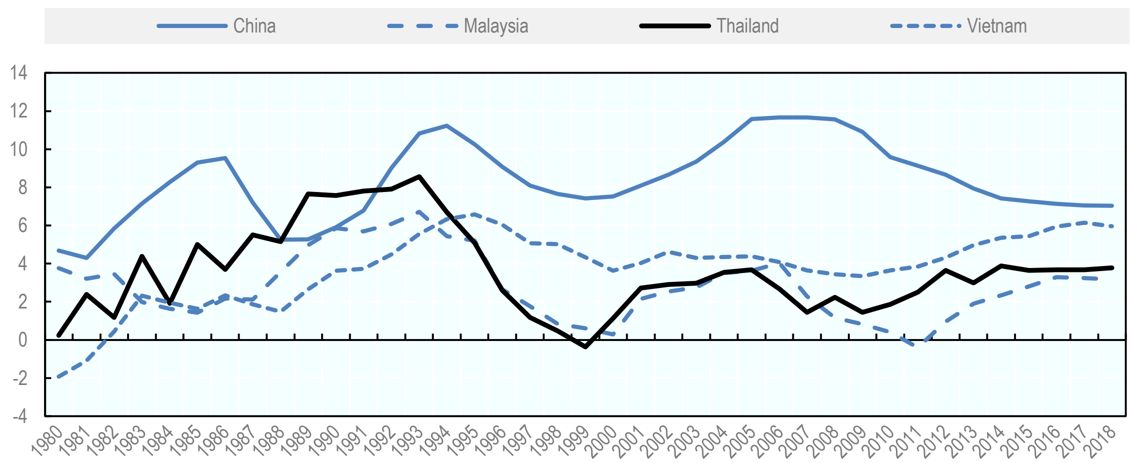
- Competitiveness has been improving in activities that are targeted under current development plans. Chapter 4 further confirms that investment has been expanding in many of these areas, but Thai-based manufacturers and services firms have still a lot of potential to improve and expand operations in targeted activities. Chapter 5 assesses to what extent Thailand's investment promotion and facilitation efforts support the transition of Thai-based businesses from lower toward higher value added activities and how the current crisis has influenced these efforts. Chapter 11 further elaborates on this question by proving policy options on how outward foreign direct investment (OFDI) could help Thai industries to move lower value added activities to less developed neighbouring countries and to acquire knowledge and technologies in more advanced industries.
- Important disparities exist across sub-national regions and firm types. The chapter focuses mostly on measures related to economic competitiveness and shows how they may constrain Thailand's plan to move towards inclusive and sustainable development. Chapter 5 discusses how investment promotion and facilitation could help to address some of these inequalities. Beyond reducing inequalities, promoting responsible business conduct is important. Chapter 9 takes stock of Thailand's policy efforts on RBC and shows what could be done further to use RBC as tool for advancing economic competitiveness and sustainable development, particularly during the current crisis as well as its recovery where RBC could be under stress.
- An important policy objective is to enhance investment in green technologies and renewable energy. Subsequent chapters will put the question of environmentally sustainable production at the centre of discussion by looking at how foreign investment contributes to the greening of industry (Chapter 4) and identifying what the government is doing to enable competitiveness and investment in this area (Chapter 10). Upholding the need for economic greening despite the current economic crisis will be key for achieving Thailand's development objectives.
- A strong legal framework for both foreign and domestic investors is an important condition for the transition to higher value added production, expansion of innovation capacity and importantly for the development of services. Chapter 6 examines how Thailand could approach a reform agenda in the area of regulatory restrictions to foreign investment, particularly in services, and how to clarify the legal framework for foreign entities. Chapter 7 further investigates to what extent the legal framework for investment may challenge investment growth, focusing on intellectual property protection and contract enforcement.

Positive but relatively low productivity growth in recent years

Labour productivity, or value added per worker, is a simple measure to illustrate competitiveness. Labour productivity trends reflect Thailand's transition from an agrarian economy towards an industrial powerhouse in the 1980s and early 1990s, as seen in other emerging economies in Asia. Average productivity growth exceeded 8% during this period (Figure 3.1). Productivity gains were achieved through a reallocation of under-utilised rural labour from agriculture to labour-intensive manufacturing, as well as capital accumulation and imported technology embodied in growing foreign firm activity. Productivity growth started to decline in the 1990s, even before the 1997 crash, driven essentially by structural misalignments, particularly with respect to insufficient skills development (Chapter 2).

Figure 3.1. Relatively low productivity growth since mid-1990s

Labour productivity growth (5-year moving average, in %)



Source: OECD based on Conference Board's Total Economy Database.

Labour productivity grew on average at around 3% over 2000-18, well below the rates achieved during the industrialisation period in previous decades. Slower productivity improvements reflect trends in other countries at the upper middle-income level that can no longer shift labour from agriculture into more productive manufacturing activities. Nonetheless, one-third of the population is still involved in agriculture and as the government looks to Thailand 4.0, it remains important to ensure that an agrarian population, already the lowest income sector in the country, does not get left further behind. Their function remains important for the Thai economy, for example in respect of food security.

Thailand's competitive advantage in labour-intensive manufacturing industries may also be challenged due to its ageing workforce and thus rising labour costs, although one-third of employment is still in low-productivity agriculture, a share seen in less advanced countries such as Indonesia and Viet Nam. Labour reallocation may have been discouraged by relatively high agricultural commodity prices as well as Thailand's rice-pledging policy, through which the government bought rice at above market prices. Some of that labour may still be absorbed in manufacturing as these policies have now been abolished.

In the 12th five-year development plan (2017-21), Thailand has set its labour productivity target at 2.5% annual growth. While these growth rates are within reach, given trends seen over the past years, the Thai economy is nonetheless confronted with significant challenges to boost productivity more sustainably, and the Thailand 4.0 plan and related strategies have adequately identified those challenges. Future productivity will be determined by firms' capacity to move into higher value-added activities within each sector, increasingly develop modern and digitalised services, engage in innovation activities, and develop and access adequate human capital – along with more balanced regional development, important regulatory reforms and infrastructure enhancements.

Possible productivity implications of the COVID-19 crisis

Thailand's productivity challenge might become yet more important now that the world has moved into a global economic crisis related to the COVID-19 pandemic. There are a number of factors why this crisis might further impair global and Thailand's productivity growth and result in increasing productivity disparities across firms, sectors and countries (Baldwin and Weder di Mauro, 2020). In the short term, 'measured productivity' is likely to fall as the Thai government – and rightly so – has implemented policies to avoid or reduce labour lay-offs even if firms' outputs decline and support 'survival' of a maximum number of firms, particularly SMEs, which are most affected (Chapter 2, Box 2.1). In the longer run, aggregate productivity impacts may depend on outcomes along four channels, which are all influenced by public policies (Di Mauro and Syverson, 2020):

- ***Within-firm productivity growth:*** Thai crisis-related policies encourage firms to keep employees on the payroll which will help ensure that knowledge of these employees is not lost and can be put back to work productively once firms start operating again. On the other hand, many firms have been innovating new ways of working and producing, mostly involving digital technologies. Some of these innovations may yield insights that raise productivity even after the crisis. Unlike other countries, Thailand has been relatively hesitant to implement structural policies to promote and enable such innovations (OECD, 2020a). Moreover, barriers of movement of goods and labour – particularly across countries – are increasing transaction costs. This could lead to less efficient production and yield difficulty in finding the (foreign) labour skills required for Thailand's upgrading plans (Chapter 5).
- ***Resource reallocation between firms:*** Productivity disparities between SMEs and large firms in Thailand are already severe (see below). During the crisis, small firms are likely to suffer the most and are more likely to exit without state support. Larger firms are typically better prepared to adjust operations during crises. Thailand introduced extensive packages to support SMEs (Chapter 2, Box 1.1). While unconditional support for SMEs makes sense in the short-run, state supported finance will need to be provided to relatively more performing SMEs and innovative start-ups during the recovery and beyond. This does not mean that future state support and promotion should only target (large) technology-frontier firms, but rather SMEs with relatively higher potential for upgrading and productivity growth in order to level the playing field and reduce disparities.
- ***Reallocation across sectors:*** The crisis will also involve reallocations across sectors in Thailand. Air and other transport services, tourism and possibly some retail activities are likely to face more persistent contractions. On the other hand, sectors like healthcare (including pharmaceuticals, medical equipment, bio technology and healthcare services) and ICT are expected to grow, including due to additional incentives provides to these sectors (Chapter 5). Thailand's manufacturing sector that currently suffers from interrupted global value chains may turn out to be quite resilient and start growing again soon after the crisis, like during the floods in 2011 (Chapter 2; and Miroudot, 2020). Many of the targeted sectors under Thailand 4.0 could thus remain future growth pools, but it is difficult to predict how aggregate productivity will be affected by sectoral reallocations.
- ***Accumulation of physical and human capital:*** Unlike during wars, physical capital is not being destroyed during this crisis but some infrastructure for travel and tourism will be obsolete or underutilised for a potentially longer period. Similarly, the stock of human capital should not be reduced as a result of the crisis, except if foreign talents have left and decide not to return. On the other hand, there is a risk that important projects to develop large-scale infrastructure projects (such as railways, airports, and renewable energy) and initiatives to develop human capital will be delayed or cancelled. While the crisis could slow the speed of capital accumulation, the need to develop key infrastructure and improve skills will be essential for a sustainable crisis recovery (Chapter 10).

While these reflections should be taken into account for short and longer term policy priorities, it is important in the rest of this chapter to take stock of Thailand's pre-crisis competitiveness. It helps identify strengths and weaknesses of the Thai economy, informing policy directions during the recovery.

How competitive is Thailand's manufacturing sector

Targeted productivity and growth engines in the Thailand 4.0 strategy include a number of manufacturing industries, namely (bio) fuels, (bio) chemicals, electronics, automotive, machinery (robotics), and food (Chapter 2). Activities effectively targeted in these industries cannot be singled out in broad sector classifications available for productivity analysis and are not explicitly defined in official strategy documents. Nonetheless, competitiveness dynamics of 'approximated target sectors' provide an indication where Thai manufacturers stand in their Thailand 4.0 readiness and are examined in this section. Further below, the analysis looks more closely at target industries and uses specific activities prioritised for promotion by the BOI to analyse competitiveness in those activities and sub-sectors.[1]

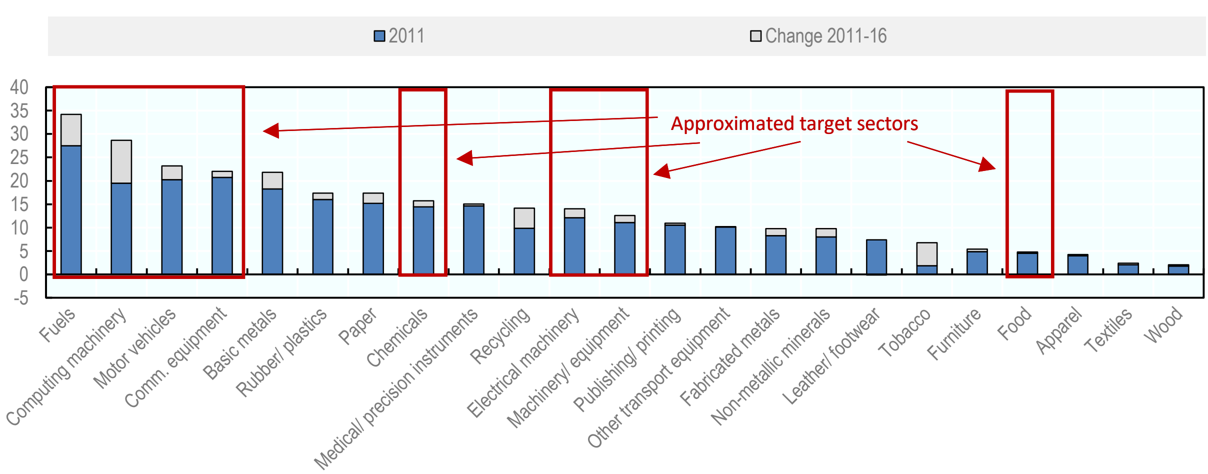
Productivity in targeted sectors is improving

The manufacturing sector has been an important driver of growth and productivity in Thailand and there is hope that it recovers relatively fast from the crisis (Chapter 2). Its share in GDP has increased roughly from 20% in the 1980s to 30% today. However, the gap in manufacturing labour productivity relative to advanced economies remains considerable (APO, 2018). Manufacturing productivity in Thailand corresponds to approximately 60% of that in Malaysia and although it equals productivity in China.

Strong industrialisation has provided the basic capabilities in all target sectors. Most of these industries are those that are relatively more capital-intensive (fuels, machinery, automotive, electronics, chemicals) and, as expected, report relatively higher productivity than labour-intensive industries such as apparel, furniture and wood sectors (Figure 3.2). The food sector is an exception. It is also among the target industries and – given its labour-intensive characteristics – reports lower productivity.

Figure 3.2. Some productivity improvements in Thailand 4.0 target sectors

Average value added per employee (in constant USD 1000s)



Note: Sectors correspond to 2-digit manufacturing sectors according to ISIC Rev. 3. Red rectangles indicate approximated target sectors under the Thailand 4.0 plan.
Source: OECD based on Industrial Census 2012 and 2017.

Thai manufacturers in capital-intensive sectors have considerably improved labour productivity. Over 2011-16, average firm productivity increased by 25% in fuels, 47% in computing machinery, 15% in motor vehicles, and 9% in chemicals. Nonetheless, productivity levels remain at medium levels and therefore mean that Thai manufacturers are far from being positioned at the top end of the value chain. The productivity gap with advanced economies remains high in all capital-intensive sectors and particularly in chemicals.[2]

In the food sector, the productivity gap with more advanced peers is much lower, but firm productivity in the food sector stagnated over 2011-16. At the aggregate sector level, productivity has even decreased, with decreasing total value added and increasing employment. Improving productivity in the Thai food sector is particularly important given its size and thus potential for overall competitiveness. Food is by far the largest manufacturing sector in Thailand, both in terms of value added (19%) and employment (22%), followed by motor vehicles with 12% of total value added and, in terms of employment, fabricated metals with just 7%.

Comparative advantage is increasing in most target sectors…

Another competitiveness indicator is revealed comparative advantage (RCA) which is used for calculating a country's relative advantage or disadvantage in a certain industry as evidenced by its trade flows. Thailand has a RCA in an industry if it exports relatively more in that industry compared to the rest of the world.[3] RCA is calculated for a total of almost 100 sub-sectors in ten broad manufacturing sectors.

Beyond just counting the number of sub-sectors with a RCA, it is useful to consider all sub-sectors and classify them into classical, emerging, declining and marginal:

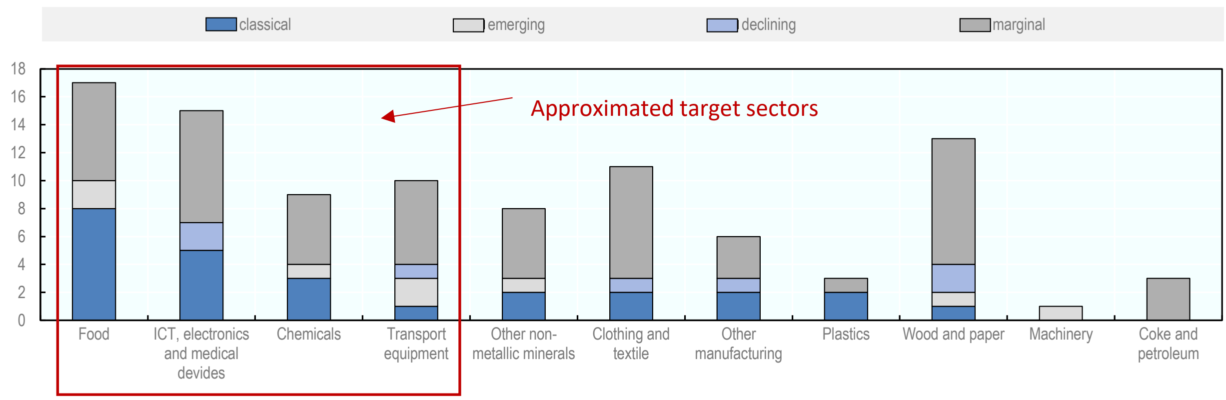
- ***Classical*** sub-sectors are those in which Thailand had a RCA in at least 4 years in both 6-year periods used in this analysis: 2005-10 and 2011-16. Classical sub-sectors are thus those in which Thailand has traditionally a relative advantage of production and exporting.
- ***Emerging*** sub-sectors are those in which Thailand has gained comparative advantage more recently; that is, Thai producers had a RCA in at least 4 years over 2011-16 but in less than 4 years over 2005-10. Accordingly, emerging sectors could be considered as potentially new growth pools.
- ***Declining*** sub-sectors are sectors in which Thailand has been losing comparative advantage over the past decade. These sub-sectors had a comparative advantage in the past, but over 2011-16 they had a RCA in less than 4 years.
- ***Marginal*** sub-sectors are those that did not have a RCA in at least 4 years in both periods. These sectors may thus be further away from getting a competitive edge in Thailand's manufacturing sector.

This analysis has its limits in assessing comparative advantage of production. For example, many low-tier supplying industries in transport equipment may be highly developed in Thailand but not export-oriented given the large domestic automotive industry. This could explain a low number of RCA sub-sectors in the Thai automotive industry (Figure 3.3).

Among Thailand's target sectors, a strong competitive edge is confirmed in the food sector. Thailand has a RCA in 10 out of 17 sub-sectors in the food industry of which 2 sub-sectors are emerging; namely production, processing and preserving of meat and meat products; and soft drinks and production of mineral waters. The chemicals and transport equipment sectors have also been improving comparative advantage over recent years, although from a lower base: chemicals had a RCA in 3 out of 9 sub-sectors over 2005-10 and gained a competitive edge in basic chemicals over 2011-16. Transport equipment had a comparative advantage in 2 sub-sectors in the late 2010s, and was losing RCA in one sector (bicycles) more recently while gaining competitiveness in 2 other sub-sectors (parts and accessories for motor vehicles; and motor vehicles). The ICT, electronics and medical device sector traditionally had a comparative advantage in 7 of 15 sub-sectors but has been losing ground in 2 sectors (watches and clocks; optical instruments). All non-targeted sectors have lower numbers of RCA sub-sectors, with mostly stagnating or falling trends.[4]

Figure 3.3. Trends in revealed comparative advantages identify food processing as the most dynamic sector in Thailand

Number of sub-sectors by RCA trend



Source: OECD based on World Integrated Trade Solution (UN Comtrade).

…while competitiveness is limited to activities of lower strategic priority

Beyond looking at broad target sectors, the classical, emerging, declining and marginal sub-sectors in Thailand are further grouped into the level of strategic priority for Thailand 4.0 implementation (Figure 2.4). The extent to which a sub-sector is of strategic priority is identified by matching sector level data available for the RCA analysis with activities promoted by the BOI and the extent of generosity of incentives provided. The more generous the BOI incentives are for a given sector, the higher is the strategic priority according to this classification.[5]

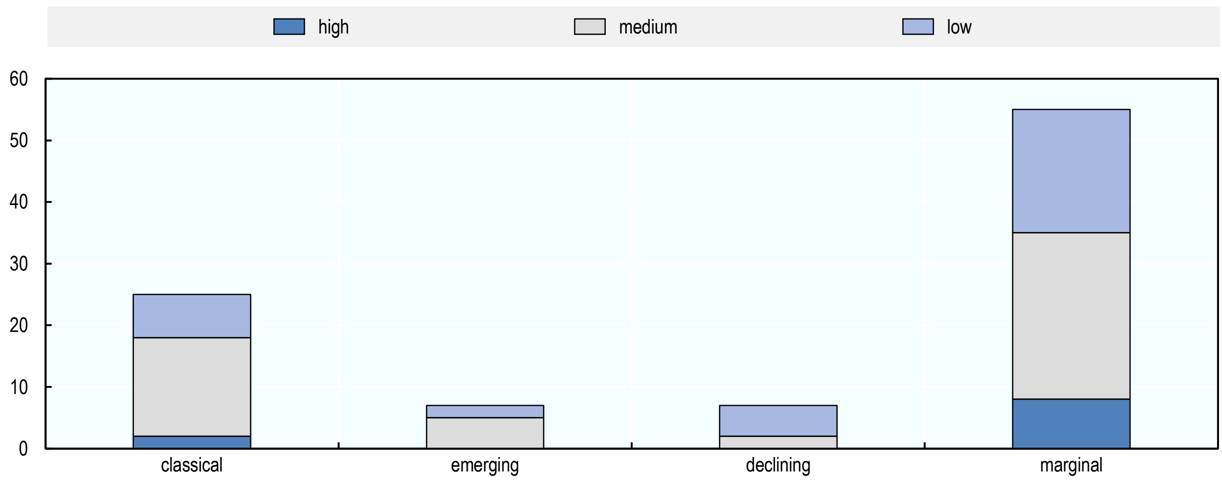
The analysis reveals that among the classical sub-sectors 90% (or 23) are of medium or low strategic priority (Figure 3.4), while only 10% (or 2) sub-sectors are classified as high priority. This finding reflects that Thailand is not putting high strategic priority on activities in which firms have a long-standing comparative advantage, as these classical activities are not expected to require additional support and prioritisation.

For the seven emerging sub-sectors, none receives a high strategic priority. At first glance, one may expect that emerging sectors have become emerging over recent years as a result of high prioritisation, but prioritisation would not have translated into competitive shifts yet, given that strategic priority in this chapter is based on the most recent BOI promotion policy (2015-21) and the data used for this analysis only go up until 2016. Additionally, high prioritisation of the current emerging sub-sectors would not be justified in a Thailand 4.0 context as these sectors involve relatively low value-added activities (e.g. basic chemicals, articles of concrete, sawmilling and planing of wood). Just like for classical products, emerging sectors do not need additional support as they are already competitive.

The declining sub-sectors are predominantly of low priority for Thailand. Out of 7 sub-sectors, 5 are classified as low priority and 2 are of medium priority. Declining industries include relatively low value-added activities in wood and paper products as well as garments. In the Thailand 4.0 context, it is indeed advisable not to provide additional incentives for activities that are losing comparative advantage, particularly if they involve low value-added activities.

Figure 3.4. Thailand prioritises the development of activities without a comparative advantage today

Number of sub-sectors by RCA and level of strategic priority (high, medium, low)



Note: Activities of strategic priority are defined by the level of generosity of BOI incentives provided in a given sector (BOI, 2018). Details of this taxonomy are available upon request. A detailed discussion on the BOI incentives is provided in Chapter 5.
Source: OECD based on World Integrated Trade Solution (UN Comtrade).

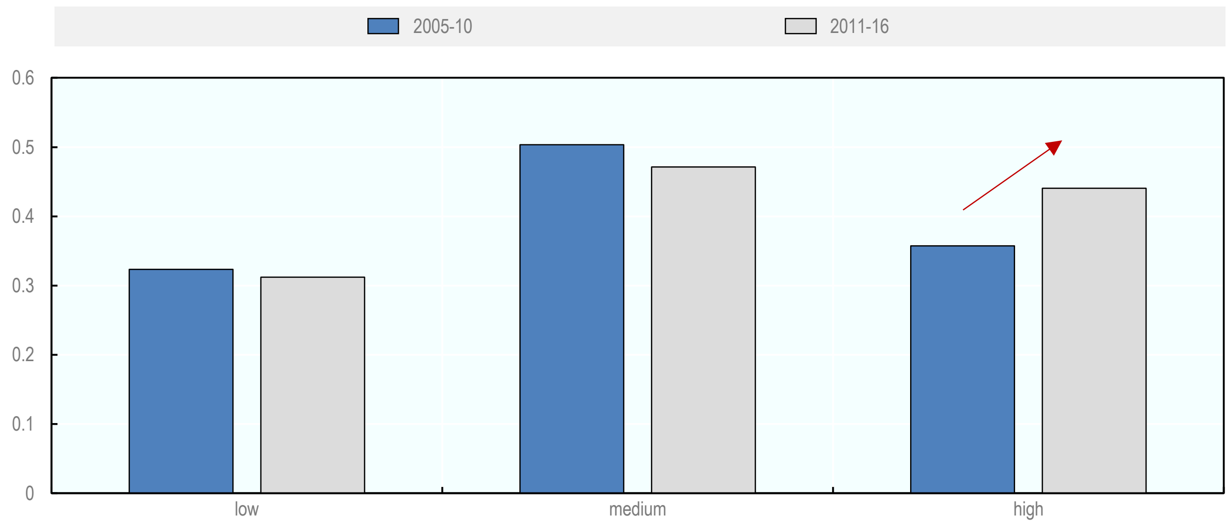
The competitive edge in high priority activities is improving

Thailand has over 50 sub-sectors in the marginal category, with no systematic RCA over the past decade (Figure 2.4). This is not worrisome, particularly if marginal activities involve activities of low priority. Across manufacturing industries, a number of low and medium priority sectors are marginal. These include for example the manufacture of bodies for motor vehicles or trailers, and the production of paints (low priority), or the manufacture of garments and footwear, wood containers and pharmaceuticals (medium priority). As such, these activities may involve activities within sectors that are targeted in the Thailand 4.0 strategy more broadly but are not prioritised given their lower value added.

Most high priority activities are also pooled in the marginal category, as Thai producers do not have a RCA in these activities. They include for example the manufacture of accumulators and primary batteries, aircraft and spacecraft, or fertilisers. If Thailand has no RCA in these activities because current capabilities are far from those needed to be competitive, it would not be useful to put them as high priority and it would not be realistic to see them emerging as future growth pools. However, if producers are not far from having a competitive edge in high priority activities, an additional boost provided by state support and incentives could be considered as an important and positive trigger.

The analysis indicates that capabilities and competitiveness are still lagging considerably in high-priority activities but that they have been improving over recent years. The average RCA score in high priority activities is currently at 0.45, up from 0.35 over 2005-10 (Figure 2.5). A RCA score of 1 or above indicates that an activity/sector has a comparative advantage in a given economy. Revealed scores in high priority activities that are well below 1 (as revealed in high-priority activities) mean that Thai producers are still confronted with lagging competitiveness.

Figure 3.5. Competitiveness in high priority activities is lagging but improving



Note: Activities of strategic priority are defined by the level of generosity of BOI incentives provided in a given sector (BOI, 2018). Details of this taxonomy are available upon request. A detailed discussion on the BOI incentives is provided in Chapter 5.
Source: OECD based on World Integrated Trade Solution (UN Comtrade).

Enabling upgrading for smaller domestic firms is important

Significant productivity disparities are also observed across foreign and large domestic firms as well as SMEs. Foreign firms are the most productive in all sub-national regions, closely followed by large domestic firms. SMEs are only half as productive as larger and foreign firms in wider Bangkok and EEC provinces and fall even further behind in less developed regions. Some of these disparities are partly alleviated through business linkages between foreign and domestic firms. Thai firms that develop linkages with foreign firms are more productive relative to Thai firms that do not (Chapter 4).

Recognising firm-level disparities between foreign and large domestic firms on the one side and domestic SMEs on the other side is highly important when it comes to the design of policies and programmes related to Thailand's upgrading in global value chain positions in support of progress toward Thailand 4.0. While SMEs are often less productive than larger firms, SMEs in Thailand are revealed to face particular difficulties to compete and upgrade due to the dominance of large domestic conglomerates as well large affiliates of foreign firms. These disparities are likely to increase during the crisis. It is further shown that it is mostly large firms, both domestic and foreign, that are benefiting from BOI promotion, which puts larger firms in an additional competitive advantage vis-à-vis domestic SMEs (Chapter 5). BOI promotion involves tax incentives such as tax holidays to attract investment into targeted, high-value activities in which domestic SMEs often do not compete.

Thailand 4.0 ambitions can only be attained if public policies help to level the playing field for all types of firms. For example, all firms – independent of whether or not they are promoted – should benefit from import duty reductions and may benefit from merit- or performance-based support (see Chapter 5). It is of utmost importance to put the emphasis on SME upgrading, even if upgrading does not involve technology frontier-type of activities. BOI promoted firms may receive performance-based tax exemptions if they engage in developing and training local suppliers. SMEs themselves may receive specific information and technical support from the BOI, as well as from a number of other state agencies involved in the promotion and support of local firms and SMEs (e.g. the Ministry of Industry, or the Office of Small and Medium Enterprise Promotion).

Regional differences in manufacturing competitiveness

A fundamental objective of Thailand's development plans and strategies (e.g. 20-year strategy, 5-year plan, Thailand 4.0, BOI Investment Promotion Policy; Border SEZ development; BCG economic model) is inclusive growth across regions, including in less developed regions and areas. The government recognised the challenge of regional development a long time ago and has used different strategic approaches to address the problem. In the past, regional development was approached with subsidies, cash-handouts to the poor and regional investment promotion (Chapter 2). More recently, the government has focused investment promotion on the development of industrial clusters and border special economic zones (SEZs). It is therefore important to assess Thailand's competitiveness from a regional perspective.

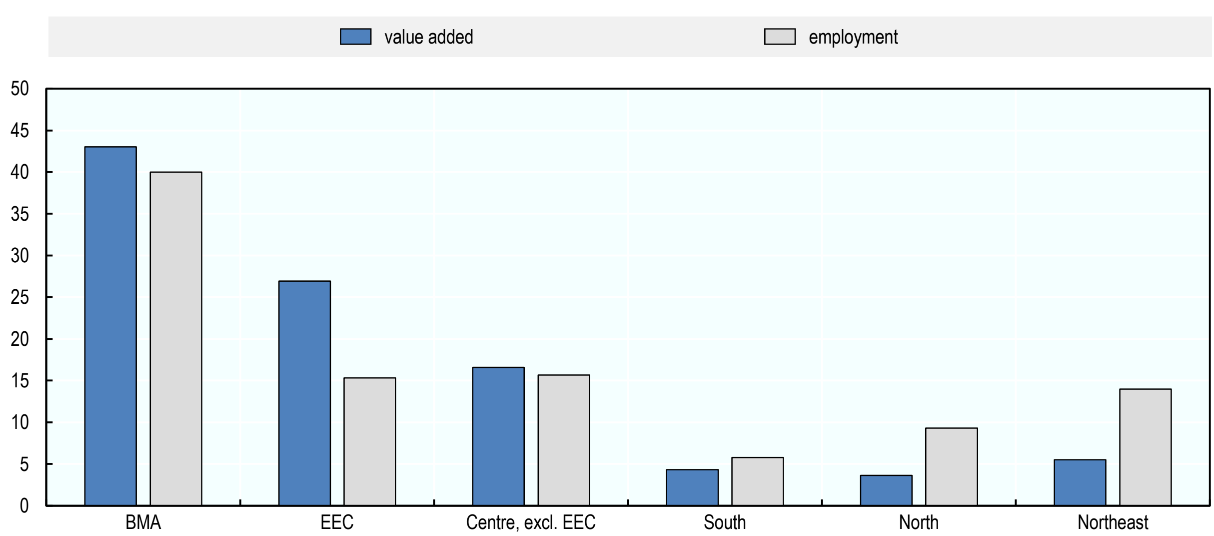
The analysis below reveals persistent productivity gaps across and within regions, with wider Bangkok and EEC leading the way. While a strategic focus on boosting higher value added activities, particularly in the EEC, will help Thailand on its path towards a modern and highly developed economy, additional efforts will be required to reduce regional inequalities and to develop a different competitive edge in lagging regions.

Concentration of economic activity in wider Bangkok and EEC

Thailand's manufacturing activity is very much concentrated in the wider Bangkok region as well as in the three provinces of the EEC. Above 40% of value added is created in the Bangkok Metropolitan Area (BMA) and 25% in the EEC (Figure 3.6). The rest of the Centre (excluding EEC) receives 15% of value added while the other regions report only marginal shares at 5% or below. The picture looks somewhat different for employment: while BMA also has a high share of 40% of total manufacturing employment, EEC's share is at 15% much lower compared to its contribution to value added. Other regions in the South, North and Northeast report higher shares in terms of employment than in terms of value added.

Figure 3.6. Value added creation and employment is concentrated in wider Bangkok

Distribution of value added and employment, by region (2016, in %)



Note: BMA = Bangkok Metropolitan Area; EEC = Eastern Economic Corridor
Source: OECD based on Industrial Census 2017.

Unequal distribution of value added and employment across regions reflects their different sectoral composition. The labour-intensive food sector is dominant in the South, North and Northeast. It is responsible for 40-50% of value added and 30-40% of employment in these three regions. Food is also the dominant sector in BMA and the Centre, with value added and employment contributions at 20-25%, but more productive and capital-intensive sectors are also important, particularly in the BMA. A low employment share in the EEC relative to its value added share is due to the dominance of capital intensive industries: motor vehicles, fuels, chemicals and machinery are jointly responsible for almost two-thirds of total value added in the EEC.

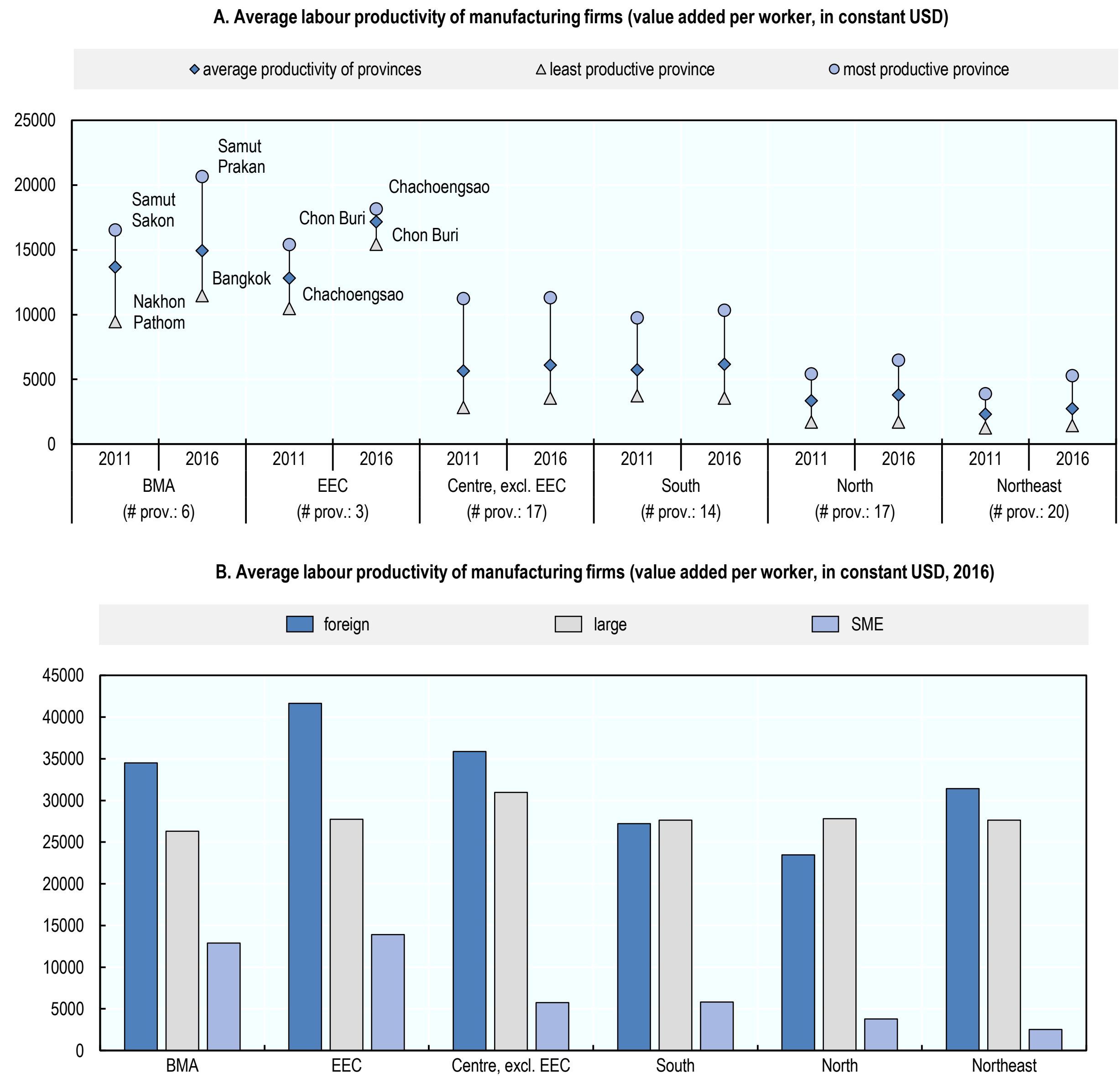
Productivity differences across and within regions are considerable

Regional disparities are further revealed in terms of labour productivity (Figure 3.7). Manufacturing firms' labour productivity is on average three times as high across provinces in BMA and EEC as compared to the Centre (excluding EEC) and the South; and they are more than six times as productive compared to firms in the North and Northeast (Figure 3.7, Panel A). A closer look at average firm productivity in each province further shows that disparities not only exist across regions but also within regions. For example, the least productive province in BMA (Bangkok) is as productive as the most productive provinces in the Centre and South. Meanwhile, the most productive provinces in the North and Northeast are more productive than the least productive provinces in the Centre and South.

Productivity disparities have also increased over time. While productivity of firms in the Centre, South, North and Northeast was stagnant over 2011-16, those firms located in BMA and EEC considerably improved productivity over the same period (Figure 3.7, Panel A). This holds particularly for firms in the most productive province within BMA (Samut Sakon), where average labour productivity increased from USD 16 000 per worker to USD 20 000 (or by 25%). Improvement is also pronounced in the most productive province in EEC (Chachoengsao). Chachoengsao was the least productive province in EEC in 2011 but firms have been able to improve productivity by 40% over 2011-16, making the province the top performer within the EEC.

Regional disparities are further exacerbated when looking at productivity performance of different firm types (domestic SMEs, large domestic firms, and foreign-owned firms). Across regions, SMEs need to do more to catch up with large domestic and foreign-owned firms in terms of productivity (Figure 3.7, Panel B). This is a pattern also found in other emerging and developed countries (OECD-UNIDO, 2010). The SME productivity gap is however much lower in BMA and EEC compared to the rest of Thailand. Average productivity of large domestic firms and foreign-owned firms was relatively balanced across regions (approximately USD 25-30 000 per worker) in 2017; while regional productivity variation of SMEs is much more pronounced. Recent research also finds significant disparities in terms of export and product innovation capacity between leading firms and provinces and laggards at risk of being left in Thailand (Apaitan et al., 2017).

Figure 3.7. Productivity differences across and within regions



Note: In Panel A, # prov. means number of provinces in each region
Source: OECD calculations based on Industrial Census 2012 and 2017.

High priority activities are expanding in Bangkok and EEC

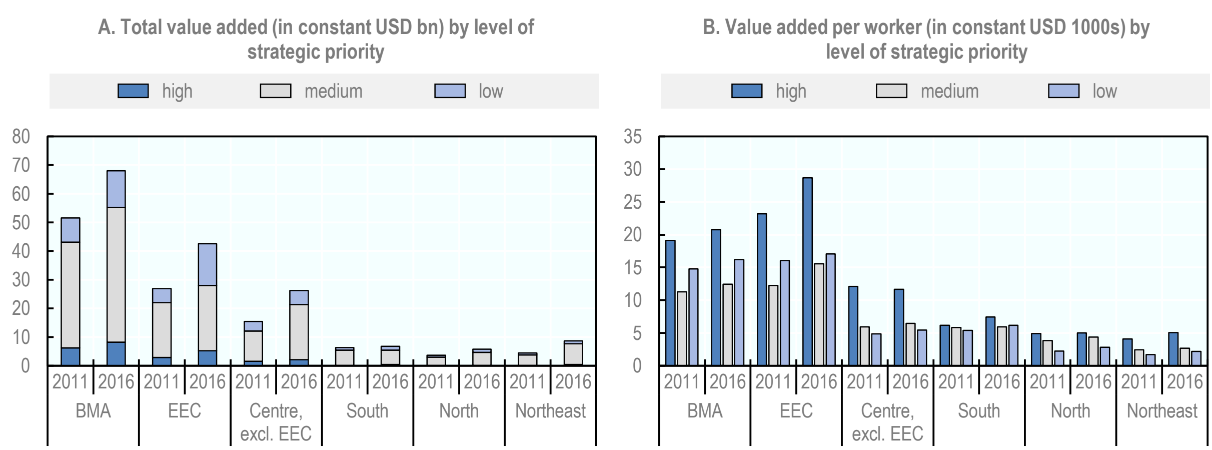
The analysis further shows to what extent regional value added is generated in sectors that are more or less prioritised under Thailand 4.0 and whether high priority activities – in case they are expanding – are likely to boost growth and productivity across regions. Most manufacturing value added has been generated through activities that under the current policy receive medium priority (Figure 3.8, Panel A). These activities include those in which Thailand has established a comparative advantage over the past decades, for example, the assembly of electronics and automobiles as well as the production of parts with medium levels of complexity in those sectors.

The contribution of high priority activities to total value added is generally low, but almost zero in the South, North and Northeast (Figure 3.8, Panel A). High priority activities are concentrated in wider Bangkok and

EEC and have contributed about 12% to total value added in both regions in 2016, up from 10% in 2011. In the rest of the Centre, those activities have contributed about 9% to manufacturing value added in both years.

Productivity of high priority activities is consistently above levels in medium and low priority activities across regions (Figure 3.8, Panel B). This reflects the technology- and capital-intensity of production and is thus in line with expectations. It illustrates that prioritising those activities and thus helping to expand them would indeed boost overall and regional growth and productivity. However, even within high-priority activities significant productivity differences across regions can be observed. Firms operating in high priority activities in the EEC in 2017 are six times more productive than firms in those activities in the North or Northeast. While productivity in high priority activities has only improved in the BMA and EEC over 2011-16, in these two regions the rate of productivity growth has been significant (10% in BMA; 25% in EEC).

Figure 3.8. Firms engaging in activities of strategic priority expand and improve performance, mainly in wider Bangkok and EEC



Note: Activities of strategic priority are defined by the level of generosity of incentives provided in a given sector. Details of this taxonomy are available upon request.
Source: OECD calculations based on Industrial Census 2012 and 2017 and BOI 2018 Guide

Services development as a trigger for enhanced competitiveness

The development of competitive service sectors has great potential to enhance inclusive growth and productivity in Thailand. It can create productive jobs, enable access to goods and services for all parts of society, including in less developed regions, as well as for SMEs, and generate positive spillovers on manufacturing productivity in GVCs. The role of services has increased over time for countries at all stages of development, contributing both to economic growth and jobs. A key driver of this shift has been the ICT revolution and digitalisation, making services increasingly tradable, transportable and storable, and thus promoting productivity growth in services and downstream industries.

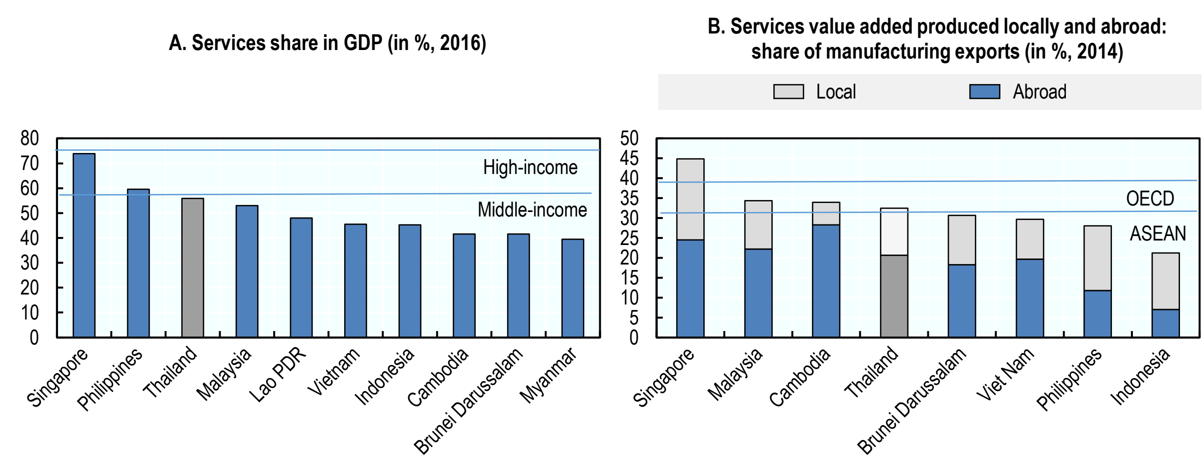
The Thailand 4.0 plan prominently reflects the rising role and importance of services (OECD, 2020b). Thailand’s targeted services sectors include backbone services such as logistics and aviation but also high-end business services activities including R&D, data analysis, consulting, education and health services as well as the promotion of the digital economy. Among BOI’s most prioritised activities for investment, i.e. those receiving the most generous tax incentives, the majority involve services activities (Chapter 5).

Services development and their use in manufacturing value chains could be enhanced

Increasing strategic focus on services is timely, but Thailand's services development still needs enhancement to catch up with that of economies that have a competitive advantage in high-end services and high-tech manufacturing activities that depend on competitive services inputs. Thailand's share of services in GDP is approximately 55% (Figure 3.9, Panel A), corresponding broadly to its services share in the late 1990s. This share is similar to that of middle-income countries on average (including lower middle-income countries); and is almost 20 percentage points below the average share of high-income countries. Service sector development should be supported to reach their full potential as services would increasingly be needed to maintain growth and move up the value chain in production.

With economic development, ICT-enabled, modern services are expected to gain in importance relative to other services. On the one hand, broad access to, and availability of, modern backbone services (such as logistics, telecommunications and financial services) is essential for inclusive growth and enhanced participation in GVCs, including by SMEs (Low, 2016 and 2013; Rentzhog and Anér, 2015). On the other hand, modern business services – including professional services like legal, consulting, engineering and advertising, as well as R&D, data and computer services – are important inputs into advanced manufacturing production and help to enable innovation. As the next industrial revolution unfolds, international production fragmentation may be slowing, and manufacturing activities might be concentrated in advanced production hubs (De Backer, 2016). Manufacturing will be increasingly automated and make extensive use of advanced, digital technologies such as big data analytics, the internet of things and Blockchains – all enabled through advanced business services (OECD, 2017).

Figure 3.9. Services could still be further developed in Thailand



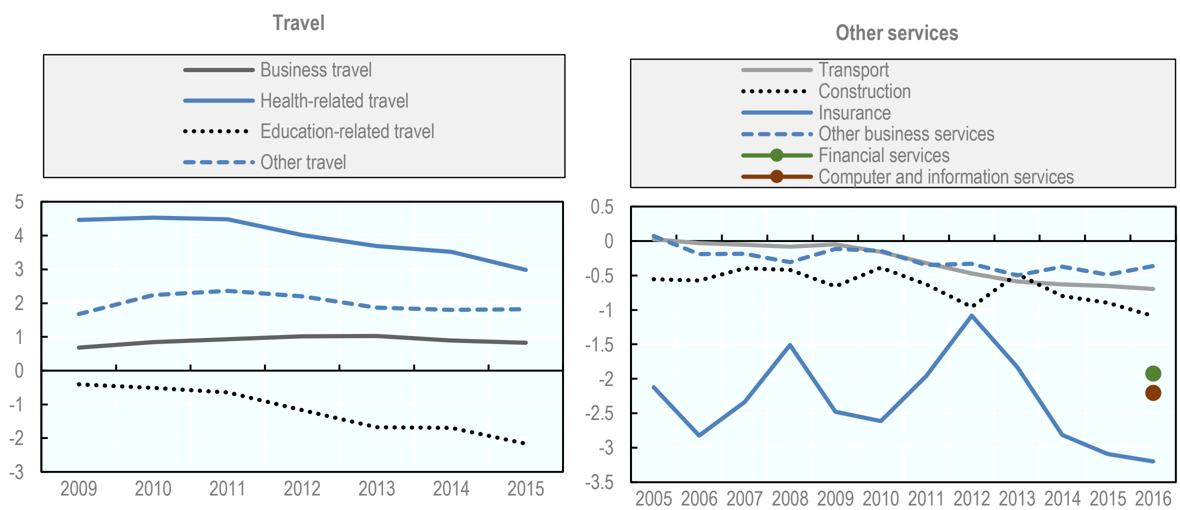
Source: OECD based on World Bank Development Indicators and OECD Trade in Value Added database

The share of modern services in total services value added remains low in Thailand compared to advanced countries. Thailand's services use and imports in manufacturing correspond to the ASEAN average, but lie considerably below services use in OECD countries (Figure 3.9, Panel B). Recent empirical evidence shows that limited use of, and competitiveness in, services is associated with lower productivity in Thai manufacturing industries (OECD, 2019).

A relatively low share of services in GDP and limited costs of services in production could be due to greater efficiency and significant competitive pressure, or on the contrary, to unproductive services and a focus on low value added activities. Beyond the size of the sector, it is therefore important to study the extent of competitive pressure, efficiency and productivity as well as the quality of services in order to evaluate the full potential services may have for inclusive growth in Thailand.[6] Thailand's competitive edge in services is limited to travel services, including potentially sophisticated and targeted health- and business-related travel services (Figure 3.10, Panel A), but this sector is now suffering and will suffer for a while in light of the COVID-19 pandemic and related travel restrictions.

Figure 3.10. Services competitiveness is concentrated in tourism

Revealed comparative advantage (RCA): score > 0 means Thailand has RCA and score < 0 means Thailand has no RCA



Note: RCA is calculated using Balassa's standard formula.
Source: OECD based on UN Comtrade

Thailand is improving competitiveness in some modern services

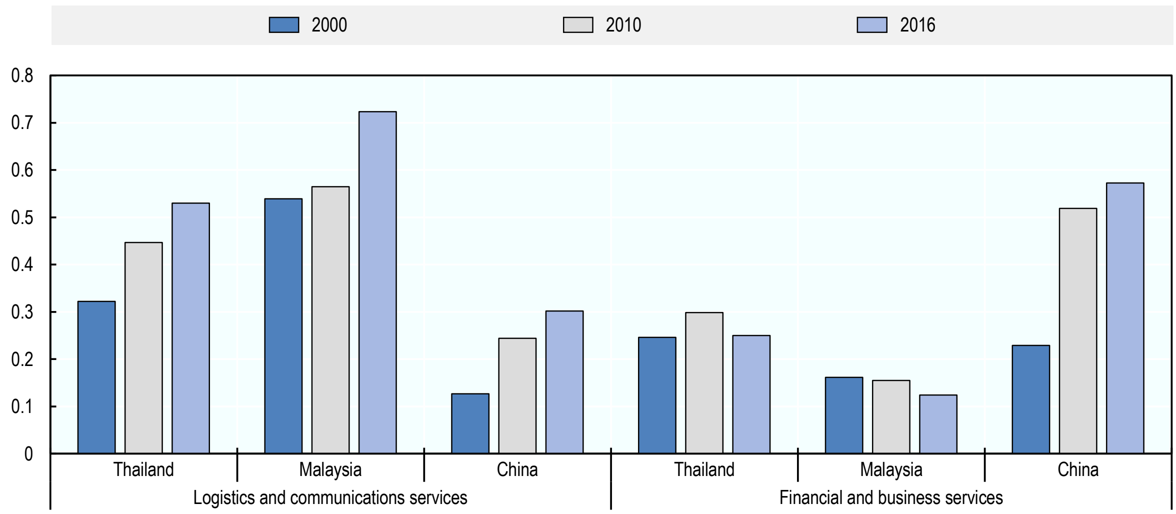
Productivity in logistics and communications services in Thailand has rapidly been catching up with frontier providers such as Singapore (Figure 3.11), while relevant authorities should place more emphasis on improving productivity and competitiveness in backbone services (ASEAN-World Bank, 2015). Peers in Asia, such as Malaysia and China, are also subject to lagging productivity in logistics and communications and are rapidly catching up with advanced countries. Further improving competitiveness in communications will also make Thailand more resilient to future pandemics where high quality communication infrastructure and services are key for business continuation.

A simple proxy of competitive pressure (or efficiency) in backbone services is the ratio of value added per unit of gross output – where value added includes labour costs and profits, and output additionally includes all input and external services costs. This ratio is higher in Thailand compared to more advanced countries and could point to persistent high mark-ups and inefficiencies in these backbone services in Thailand that are still highly restricted for new foreign and domestic market entrants (OECD, 2019).

Given its strategic location in Southeast Asia and its relative development, Thailand has the potential to become a rising logistics hub as projected by current ambitions (Chareonwongsak, 2018). However, current trends point to remaining competitiveness challenges in logistics. For example, Thailand had a comparative advantage in transport services in the late 2000s, which has been fading since then (see above Figure 3.10, Panel B). The World Bank Logistics Performance Index provides another measure of quality and efficiency of transport and logistics services (World Bank, 2018). Under this metric, Thailand has considerably been improving its performance, ranking among the world's 30 best performing logistics hubs in 2018, up from 45 in 2016. Still, Thailand will need to accelerate its performance to catch up with advanced services economies in the OECD.

Figure 3.11. Thailand is narrowing the productivity gap in some modern services

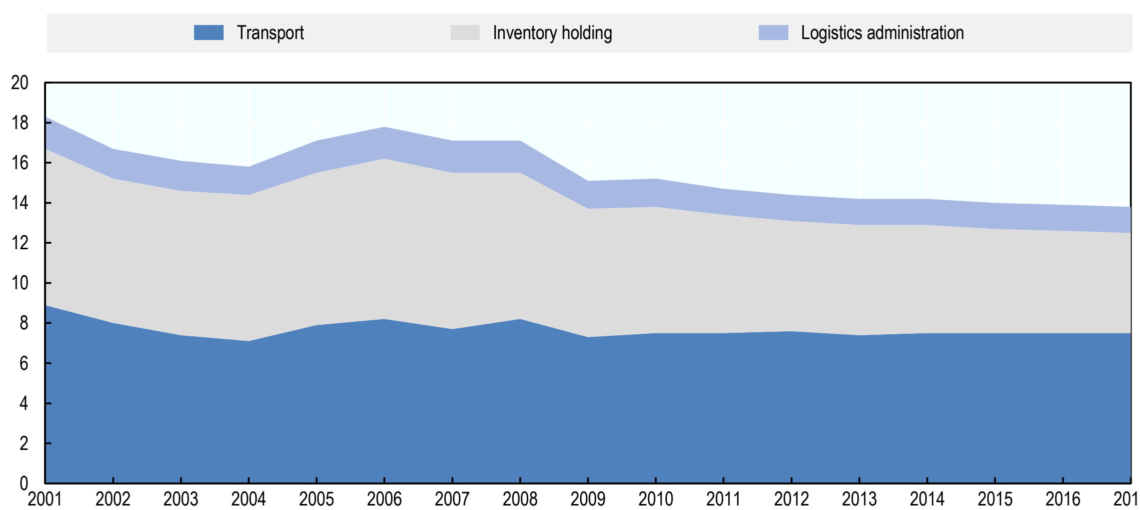
Labour productivity relative to levels in Singapore (ratio)



Source: OECD calculations based on Asian Productivity Organisation's Asia Productivity Database 2018.

Figure 3.12. Decreasing inventory holding costs in Thailand

Logistics costs relative to GDP



Source: OECD based on NESDC data.

Logistics costs relative to GDP can shed further light on specific inefficiencies relative to transport and inventory holding. A downward trend in logistics costs can be seen in Thailand since the early 2000s, which is mainly driven by decreasing inventory holding costs (Figure 3.12). However, costs at approximately 14% of GDP remain high relative to the world average of 11% and specifically relative to logistics costs in Europe at 9.5%, or those in the US and Singapore at 7.5% (Wongsanguan, 2018).

Similarly, Thailand's productivity in financial and business services is still relatively low, and has been stagnant over the past two decades (Figure 3.11). In finance and business services, China has made tremendous improvements over the past decade, positioning China increasingly well in the race towards higher value added activities both in services and manufacturing. These services are still far from having a RCA in Thailand (see Figure 3.10, Panel B).

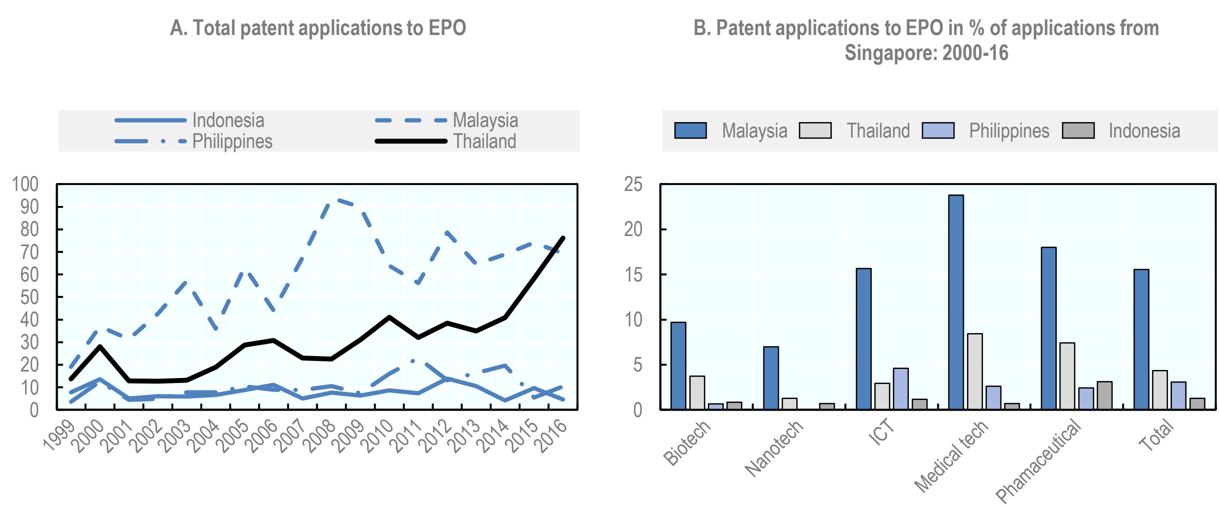
Thailand's innovation readiness

A key ingredient of Thailand's development plan includes the promotion and expansion of innovation. Investment and innovation policies aim to foster investment into R&D activities within the ten target sectors identified under Thailand 4.0 (Chapter 2). The expansion of innovation capacity is particularly promoted in the area of core technologies (including biotechnology, nanotechnology, advanced material technology and digital technology) and implemented through various government programmes often led by the Ministry of Higher Education, Science, Research and Innovation (MHESI). Biotechnology and digital technologies are likely to be further prioritised in light of their importance for resilient economies during pandemics.

Innovation output is expanding but from low levels

Trends in innovation output in Thailand, measured by the number of patent applications, show a clear expansion in recent years.[7] Total patent applications to the European Patent Office (EPO) of Thailand-based inventors have been increasing each year since the early 2000s, and have spiked since the introduction of new and ambitious development strategies around 2015 (Figure 3.13, Panel A).[8] Yearly applications doubled between 2000 and 2014, from about 20 applications to 40. Applications have surged since then to more than 70 per year. Malaysia has traditionally reported higher innovation output compared to Thailand but their total number of patent applications are today broadly aligned. In other Southeast Asian economies, with the exception of Singapore, innovation activity is broadly absent.

Figure 3.13. Thailand is emerging as an innovation hub



Note: EPO = European Patent Office. Patent applications from a certain country are defined in terms of country of residence of the inventor.
Source: OECD based on PATSTAT data provided by OECDStats.

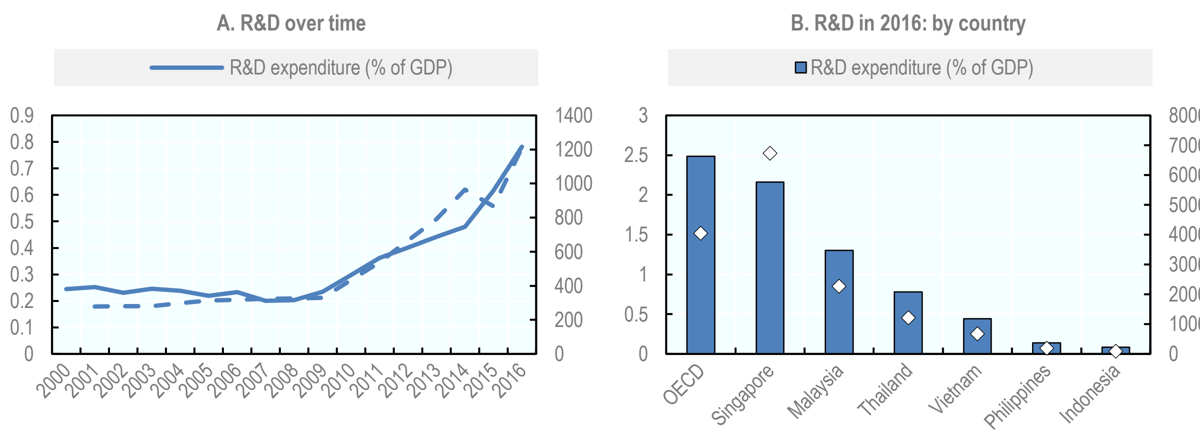
Aggregating total innovation output over 2000-16 reveals that Malaysia is an outstanding country for Thailand to observe in order to develop on the issue (Figure 3.13, Panel B). Malaysia-based inventors have jointly filed three times as many patent applications to the EPO compared to Thailand-based inventors. These trends also match with respect to applications in specific technologies, although in medical technologies and pharmaceuticals, inventors in Thailand are slightly closer to the volumes of patent applications of their peers in Malaysia.

R&D activity is increasing in Thailand

The volume of innovation output in terms of patent applications corresponds to trends in research and development (R&D) activity in Thailand. R&D expenditure by private businesses and public institutions fluctuated around 0.2% of gross domestic product (GDP) in the 2000s and has gained importance since 2010 (Figure 3.14, Panel A). R&D expenditures have quadrupled relative to GDP over the past decade. These trends closely match the number of researchers employed in the field of R&D.

Despite the surge in R&D activity, Thailand needs to invest more in R&D when compared to Malaysia as well as OECD countries, at least relative to size of Thailand's economy and population (Figure 3.14, Panel B). For example, OECD countries spend, on average, 2.5% of GDP on R&D and employ 4000 R&D researchers per million people. Thailand's R&D expenditures correspond to one third of those in the OECD and it employs half as many researchers per million people as the OECD.

Figure 3.14. R&D activities are picking up in Thailand

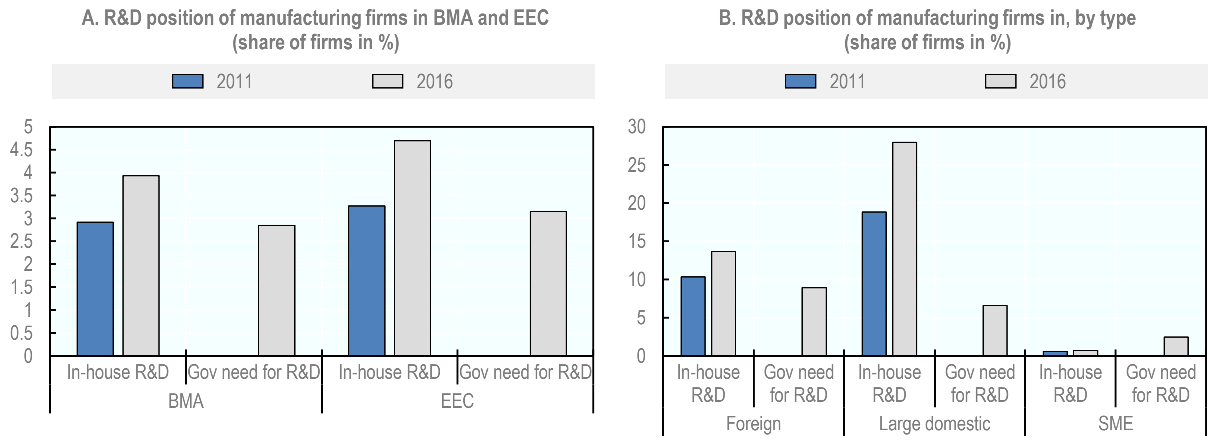


Note: R&D expenditures and researchers includes activities by public and private institutions (include business sector).
Source: OECD based on World Bank Development Indicators

Relatively low R&D activity in Thailand as a whole may not match R&D and innovation capacity in specific regional hubs within Thailand or with capacities of highly-innovative frontier firms. R&D activity in the manufacturing sector is concentrated in the wider Bangkok region as well as in the EEC. These regions host not only the bulk of innovation but are also responsible for the bulk of lower value added activities in Thailand (as illustrated above). Accordingly, the share of all manufacturing firms engaging in R&D in these two regions at 4-5% in 2016 is still very low (Figure 3.15, Panel A). In line with aggregate trends, R&D activity is increasing. In 2011, the share of firms with R&D expenditures was just about 3% in both regions.

R&D activity is almost exclusively pooled among large domestic and foreign manufacturers (Figure 3.15, Panel B). Almost 30% of large domestic firms – firms with more than 200 employees – engaged in R&D in 2016, up from just 20% in 2011. With a share of 15% of all foreign firms, foreign investors are less likely to spend on R&D in Thailand compared to their large domestic peers. This could illustrate that foreign firms may still not consider Thailand as an innovation hub and are therefore less likely to establish R&D centres compared to domestic firms which may have limited alternatives to locate R&D elsewhere. In fact, foreign firms are more likely to report that government support and incentives for R&D should be strengthened. The most recent government efforts have certainly addressed this concern, which is starting to pay off. Preliminary statistics confirm that R&D spending in 2018 increased by 36% and is expected to increase by more than 30% in 2019.[9]

Figure 3.15 An increasing but still small share of manufacturing firms engage in R&D



Note: In-house R&D = firms reporting that they spend on R&D activities; gov. need for R&D = firms reporting that they require government support for R&D.
Source: OECD based on Industrial Census 2012 and 2017

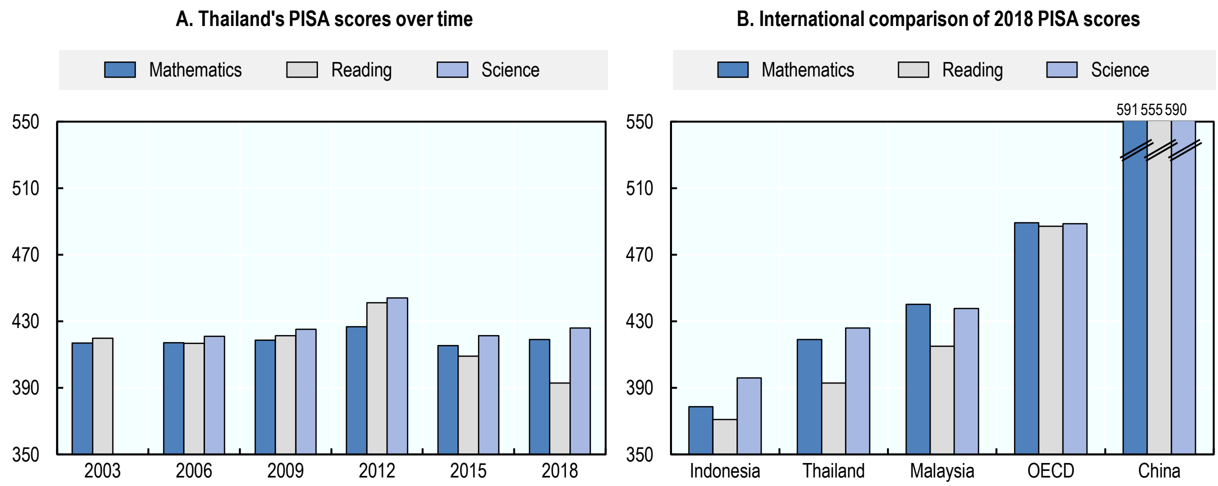
Enhancing skills in Thailand

The lack of adequate human resources has long been a challenge for Thailand's competitiveness (Chapter 2, Figure 2.2). Thailand's plan to become a value-based, innovation-driven economy, and to attract investment accordingly, is only possible if the skills gap and mismatch is addressed quickly and current crisis should not delay government efforts to address this important channel. This holds not only for the most advanced skills of researchers, engineers and managers, but also and essentially for skills of technicians and vocational workers. Thailand 4.0 has made the development of skills a key policy priority.

Improving the quality of basic education

The development of skills needed in the labour market depends on a strong system of basic education, upon which worker skills can be developed. Access to basic education at the primary and secondary levels is almost universal and public expenditures on education, at 4% of GDP, are comparatively high. Nonetheless, the quality of basic education needs some improvements in order to meet with global benchmarks. The OECD Programme for International Student Assessment (PISA) tests 15-year students in the area of mathematics, reading and science. Thai students need to enhance basic skills compared to comparator countries in Asia and the OECD average since their outcomes have been declining since 2012 (Figure 3.16). Differences of access to high quality education are significant. Students from low income families, and often from rural backgrounds, are less likely to have access to high quality education (OECD, 2018). The government is addressing challenges of basic education with a strategic plan based on recommendations from the OECD-UNESCO (2016).

Figure 3.16. Trends in quality of basic education in Thailand



Source: OECD, PISA 2018 Database

Enhancing skills across different qualifications

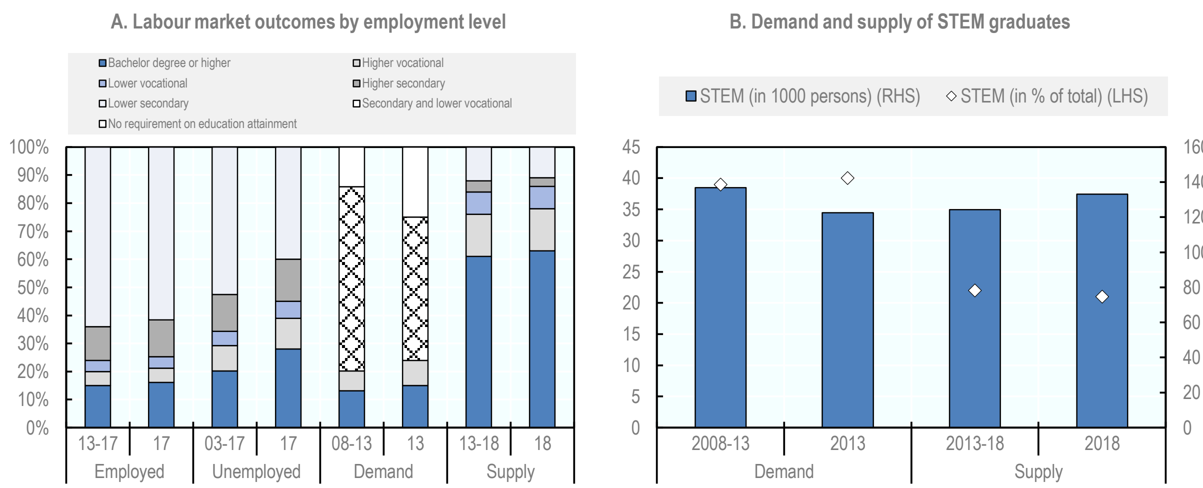
Thailand faces the challenge of developing adequate worker skills. For its plan to move to higher value activities and innovation, the availability of vocational skills and science, technology, engineering and mathematics (STEM) skills are essential. Thailand would also need to boost English language skills of its workforce.

Thailand has a systematic undersupply of secondary and lower vocational skills. In 2013, the labour market demand of secondary and lower vocational skills corresponded to above 50% of total demand, while the supply of those skills was only around 10% of total supply (Figure 3.17, Panel A). Many students in Thailand decide to proceed with higher education because the remuneration is expected to be considerably higher with a university degree (Ramos, 2016) and vocational education is not as valued and accepted by Thai society as in other countries such as Germany and Switzerland. The Office of the Vocational Education Commission, along with programmes of the BOI and Ministry of Science and Technology, have recently boosted efforts and programmes to increase both the quantity and quality of vocational skills and make technical training more attractive to Thai students (Anuroj, 2018). These programmes are increasingly developed and coordinated with the private sector and require students to combine practical training in companies with classroom education (see Chapter 2).

The supply of workers with bachelor or higher university degrees was above 60% in recent years, while total demand for university graduates is estimated at just 10-15%. This has also resulted in a relatively high share of unemployed university graduates (Figure 3.17, Panel A) and the allocation of graduates in occupations for which they have received no or insufficient training during their studies. This mismatch further implies that many workers have remunerations below those that they would have in an occupation better corresponding to their qualifications (Pholphirul, 2017).

The higher education system has not been producing the types and quality of graduates required by the labour market. For example, in 2010, approximately 15 000 engineers graduated from Thai universities but the predicted demand was more than 6 times as high (Iredale et al., 2014). STEM qualifications are required by 40% of total demand of workers with university degree in Thailand, while only 20% of total supply of higher education graduates have a background in STEM (Figure 3.17, Panel B). However, recent estimates indicate that the supply of graduates in STEM may broadly match absolute demand, given the overall excess of higher education supply: the number of STEM graduates needed per 1 000 people was estimated at 120 in 2013, broadly corresponding to the average supply of STEM graduates over 2013-18. However, the quality and competencies of these graduates may nonetheless not correspond to employer expectations (Saovane and Kanchanit, 2018). The problem may thus no longer be the quantity but rather the quality of STEM skills. A CEO Survey conducted by the Oxford Business Group in 2018 shows that engineering, R&D and computer technology skills remain those most needed in Thailand (Oxford Business Group, 2018). The creation of the MHESI in 2019 and its determined reform agenda – including related to enhanced coordination and joint initiatives of government agencies, educational and research institutions, industry and the local community – is an essential step to address the skills and innovation challenge.[10]

Figure 3.17. Qualification mismatch in Thai labour market



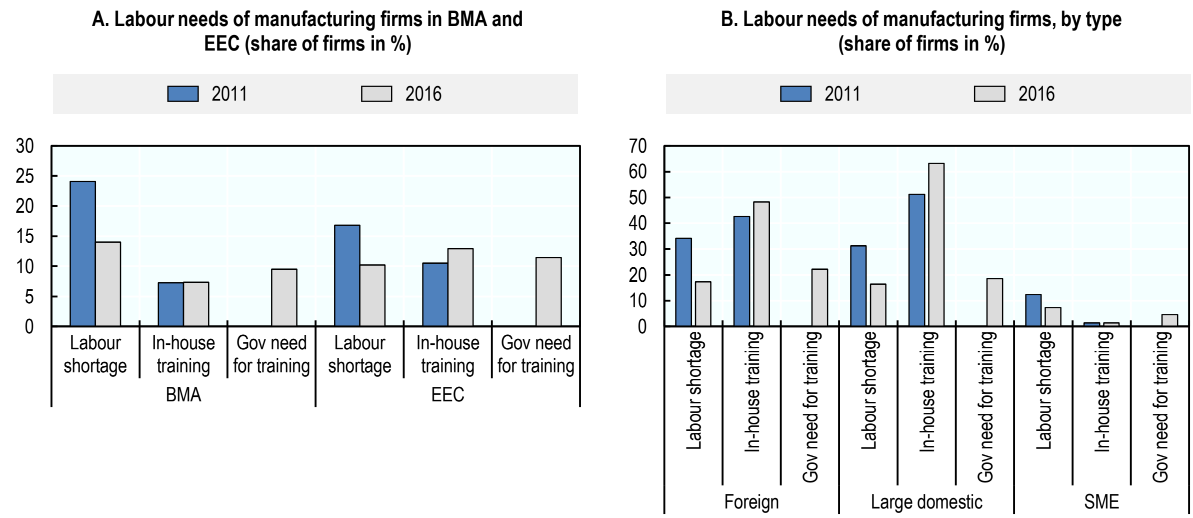
Notes: STEM = science, technology, engineering and mathematics
Source: OECD based on Saovane and Kanchanit (2018).

Manufacturing firms increasingly engage in in-house training to address labour shortages

Government efforts and adaptation of firms to labour shortages may be starting to pay off in Thailand's manufacturing sector. In Thailand's two manufacturing centres (wider Bangkok or BMA; and EEC), labour shortages have been decreasing over recent years. In BMA, 15% of all firms reported that labour shortages were a concern for their operations in 2016, down from 25% in 2011 (Figure 3.18, Panel A). These numbers correspond to 10%, down from 15%, in the EEC. Over 5% of firms in BMA and over 10% of those in EEC provide in-house training to their workers to address skills gaps and foster extension of competencies of their workers.

Foreign and large domestic firms are the types of firms most likely to report shortages of skills in the Thai labour force, but this problem was considerably reduced over 2011-16. While in 2011 around 30% of foreign and large domestic firms have reported labour shortages to be a major problem for their operations, only around 20% said the same in 2016 (Figure 3.18; Panel B). The provision and expansion of in-house training among foreign and large domestic firms is particularly common: over 40% of firms provide training with increasing numbers in recent years. Rising and relatively high shares of in-house training among larger firms (foreign firms are often large too) is due to the requirement for firms with more than 100 employees to do so under the Skills Development Act 2002. While firms have been adapting themselves with worker training to address the skills gap, more than a fifth of foreign and large domestic firms still expect the government to increase efforts to provide adequate training and skills to workers in Thailand.

Figure 3.18. Decreasing labour shortages and increasing in-house training



Note: Labour shortage = firms reporting that labour shortage is an obstacle for their operations; in-house training = firms reporting that that they are spending on in-house training; gov. need for training = firms reporting that they need more support for training from the government
Source: OECD based on Industrial Census 2012 and 2017

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Notes

[1] While manufacturing remains a priority under Thailand 4.0, it is important to note that it is services activities that are promoted most actively both within manufacturing sectors (e.g. R&D and data analytics) but also in backbone services (e.g. logistics) (see section further below in this chapter).

[2] Productivity data at the industry level are not available for other comparator countries in the region.

[3] RCA is based on the Ricardian comparative advantage concept and was introduced by Balassa (1965). Calculation details can be found in Feenstra (2016), for example.

[4] Apaitan et. al. (2017) confirm Thailand's impressive transition from an agrarian economy to a highly industrialised and sophisticated economy using The Atlas of Economic Complexity developed by Hausmann et al. (2011). They found that the product space in Thailand 4.0 industries is relatively dense, that is, Thailand has a diversified portfolio of economic activities in which manufacturers have a RCA.

[5] A detailed discussion on the BOI incentives is provided in Chapter 5.

[6] Productivity and other competitiveness measures for services are widely used, but they come with significant challenges given that measuring appropriate output is often difficult in services (OECD, 2019). These caveats should be kept in mind when using these measures.

[7] Innovation output may not always be in the form of patenting new technologies. Innovation may also involve improvements of existing or the development of new products, or improvements of production processes and marketing methods. In this section, the focus is on the patenting of technologies given its priority under the Thailand 4.0 strategy.

[8] Inventors worldwide typically aim to file patent applications in large markets, and particularly in the EU and the US, to exploit rents in these markets through the sale of patent protected products. Trends in patent applications to the EPO of Thailand-based inventors broadly match applications to the United States Patent and Trademark Office. In this section, only applications to the EPO are reported.

[9] See https://thaiembdc.org/2019/10/02/thai-spending-on-rd-rises-by-nearly-one-third/

[10] The MHESI combines higher education policy, previously under the Ministry of Education, with science and technology policy under the former Ministry of Science and Technology.

4 Trends and qualities of FDI in Thailand

This chapter examines the performance of Thailand in attracting FDI compared to Asian and OECD peers. It examines the sectoral and geographical composition of both greenfield FDI and cross-border merger and acquisitions. The chapter also analyses how FDI contributes to selected aspects of sustainable development, notably productivity, R&D intensity, skills, wages, gender equality and carbon footprint.

Summary

Thailand has historically done very well in attracting foreign direct investment (FDI). Inward FDI has been an important driver of economic growth since 2000. FDI stocks as a share of GDP increased to 50% by 2017 which is considerably higher than the ASEAN average (excluding Singapore). Due to the COVID-19 pandemic and subsequent economic upheaval, FDI flows are expected to fall.

Thailand is the third major FDI destination in ASEAN, marginally behind Indonesia. In the past ten years, Thailand's FDI share in ASEAN increased from 9% to 11%. Japan, the United States and Singapore account for the bulk of inward FDI stocks, while FDI inflows from other countries, including China, have become more important. Singapore is by far the main investor from ASEAN, accounting for 80% of total FDI stocks from the region. As a share of ASEAN, however, both Thai FDI stocks and flows have fallen steadily over the past two decades. This is partly explained by Cambodia, Lao PDR, Myanmar and Viet Nam (CLMV) which are becoming more important destinations of FDI within ASEAN, due to their low-cost labour and increasingly open investment and trade regimes.

Greenfield FDI dominates in manufacturing, while cross-border M&A deals are more prevalent in services. Sectors targeted under the Thailand 4.0 concept, such as automobiles, electronics and logistics, receive significant shares of FDI, especially greenfield investment, but FDI growth has been modest in most target sectors over the past five years. Foreign activity is concentrated primarily in the Bangkok Metropolitan Area (BMA), the Eastern Economic Corridor (EEC), and the rest of the Centre.

FDI contributes to various aspects of sustainable development, and thus the implementation of the Sustainable Development Goals (SDGs), in Thailand. In most manufacturing and services sectors, foreign firms tend to be more productive, invest more in R&D, pay higher wages, and hire larger shares of skilled workers and women. While these performance premia of foreign firms confirm the importance of the direct contribution of foreign firms to the Thai economy, they may also point to remaining gaps in adequate capabilities of domestic firms, which in turn are an important prerequisite of positive FDI spillovers.

FDI also appears to support shifts of the economy towards higher value added and better paid activities. FDI is prevalent in sectors that are more productive, spend more on R&D, have higher average wages and employ higher shares of skilled labour. Many domestic firms engage in supply and buy linkages with foreign firms in Thailand, suggesting that the positive association between FDI and sustainable development outcomes may be partly due to positive FDI spillovers on domestic firms. In fact, Thai firms that develop linkages with foreign firms are more productive relative to Thai firms that do not.

FDI is also found to support the greening of the economy in Thailand. As in most ASEAN Member States (AMS), FDI is concentrated in less polluting and more energy-efficient sectors. Foreign firms are on average less energy-intensive than Thai firms, especially in high-tech sectors.

Policy directions

Some policy directions are formulated based on the results presented in this chapter. They will be further discussed in other chapters of this Review.

- The assessment shows that targeted sectors under Thailand 4.0 attract relevant shares of FDI, especially greenfield investment. However, the growth of both greenfield FDI and cross-border mergers and acquisitions (M&A) stocks in target sectors have been modest over the past years, suggesting that there is potential to further expand FDI in those sectors. Chapter 5 focuses on Thailand's investment promotion and facilitation strategy and discusses efforts to promote investment in targeted activities.
- Inward FDI is highly concentrated in terms of origin: Japan, the United States and Singapore account for the bulk of total inward FDI stocks. High reliance on FDI from a small group of investors has increased Thailand's vulnerability to changes in economic conditions in those countries.

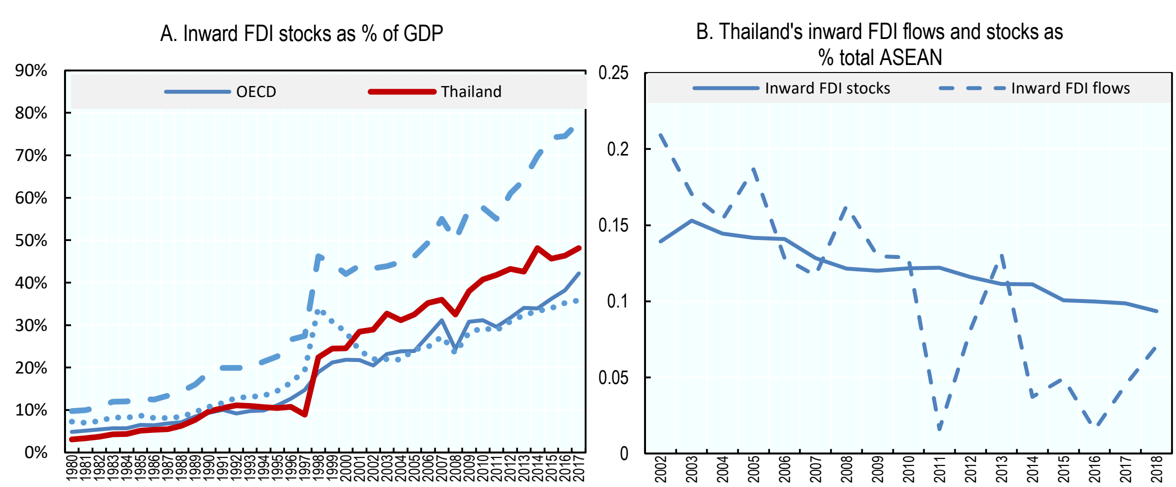
Targeting FDI from other countries, especially from the ASEAN region, is therefore important to reduce the country's exposure to external shocks.

- FDI contributes unevenly to the development of Thai regions: foreign investors are mainly located in BMA, EEC and the rest of the Centre. Chapter 5 will discuss current policy efforts to attract domestic and foreign investment in laggard regions.
- Foreign firms tend to outperform Thai firms in many areas. They are more productive, employ higher shares of skilled workers and tend to spend more on R&D. While these premia are generally explained by higher technology intensity of foreign firms, as found in many countries, if too large they may denote a lack of domestic capabilities. Benefits from FDI are not automatic and domestic firms must possess some basic skills and knowledge to benefit from the presence of foreign firms. Strengthening domestic firms' capabilities requires policy efforts in different areas including improving human capital development, boosting innovation, and engaging in responsible business conduct (Chapter 9).
- Thailand attracts FDI in less polluting and more energy efficient sectors, while overall, Thai firms are on average more energy-intensive than foreign firms, especially in high-tech sectors. These results suggest that there is the potential to enhance the environmental performance of Thai firms in many sectors, including by leveraging FDI. Chapter 10 focuses on policy considerations to enhance investment for green growth.

Thailand has historically been successful in attracting FDI

In Thailand, as in other ASEAN Member States, inward FDI stocks increased considerably in the mid-1980s. This rise was due to the government's export-led growth strategy, which was accompanied by a gradual reduction of tariffs and export taxes. FDI stocks surged also following the Plaza Accord in 1985, which led to a devaluation of the baht relative to the US dollar and other Asian currencies (Chapter 2). From 1980 to the mid-1990s, FDI stocks relative to GDP increased from 3% to above 10% (Figure 4.1, Panel A).

Figure 4.1. FDI stocks have increased steadily since 1980, but recently FDI flows have fallen



Source: OECD based on World Bank and UNCTAD

During the 1997 Asian Financial Crisis FDI stocks as a share of GDP declined slightly, but grew quickly in the following years. As in other AMS, inward FDI growth was driven primarily by an increase in M&As, as foreign firms acquired assets from Asian companies that faced severe debt and liquidity problems (UNCTAD, 2000). FDI has been an impressive growth driver from 2000 onwards. By 2017, FDI stocks relative to GDP were at almost 50%, considerably higher than average levels in ASEAN (excluding Singapore).

The global economic crisis of 2007-08 affected Thailand less than other relatively advanced AMS, particularly Singapore and Malaysia. Inward FDI stocks kept rising in absolute terms during this period, but declined slightly as a share of GDP going from 36% to 32%. Between 2013 and 2015, a period of political instability, FDI stocks as a share of GDP decelerated although they have since recovered. Due to the COVID-19 pandemic and resulting global economic turmoil, FDI flows are expected to decline in Thailand as well as in most AMS (Box 4.1).

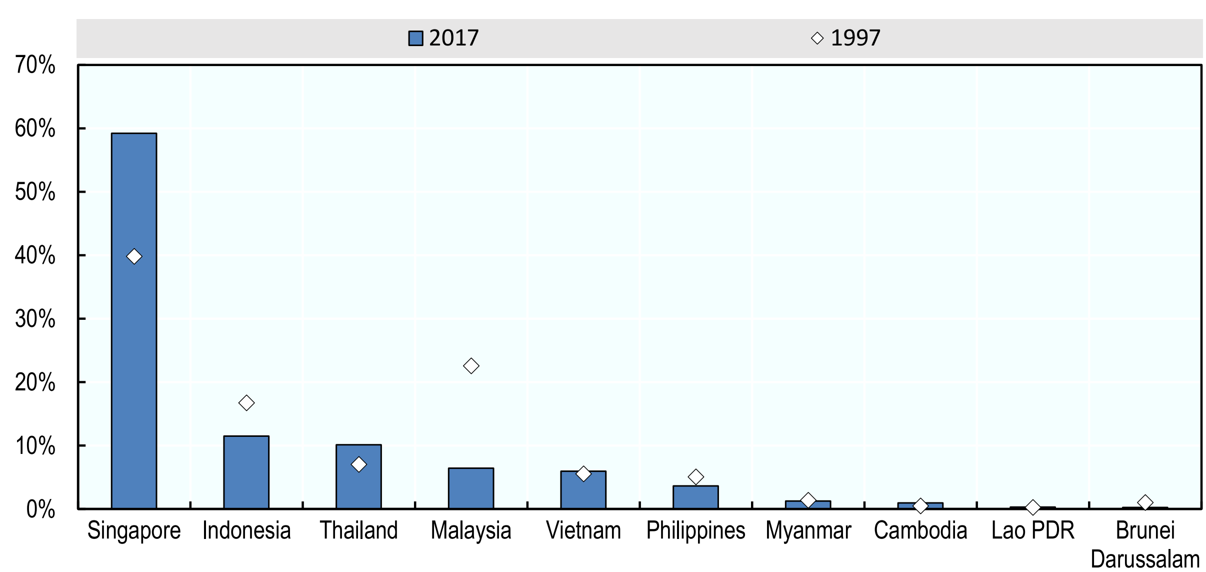
As a share of total FDI in ASEAN, however, both FDI stocks and flows in Thailand have fallen steadily over the past two decades (Panel B). This is partly explained by Cambodia, Lao PDR, Myanmar and Viet Nam (CLMV) becoming more important destinations for FDI within ASEAN, due to their low-cost labour and increasingly open investment and trade regimes.

In 2017, Thailand ranked as the third largest FDI destination in the ASEAN region, marginally behind Indonesia. Despite intensified regional competition for FDI, Thailand's inward FDI stocks as a share of total ASEAN stocks increased from 9% to 11% between 1997 and 2017 (Figure 4.2).[1] Over the same period, the share of Singapore increased by almost 20 percentage points, while the shares of Malaysia and Indonesia declined by 16 and 5 percentage points, respectively.

A small group of countries is responsible for the bulk of inward FDI in Thailand. Japan, the United States and Singapore jointly account for more than 60% of total inward FDI stocks (Figure 4.3, Panel A). More recently, FDI from Hong Kong (China), Canada, China, and Germany has become relatively more important.

Figure 4.2. Thailand is an important FDI destination in ASEAN

Inward FDI stocks (% in ASEAN total)

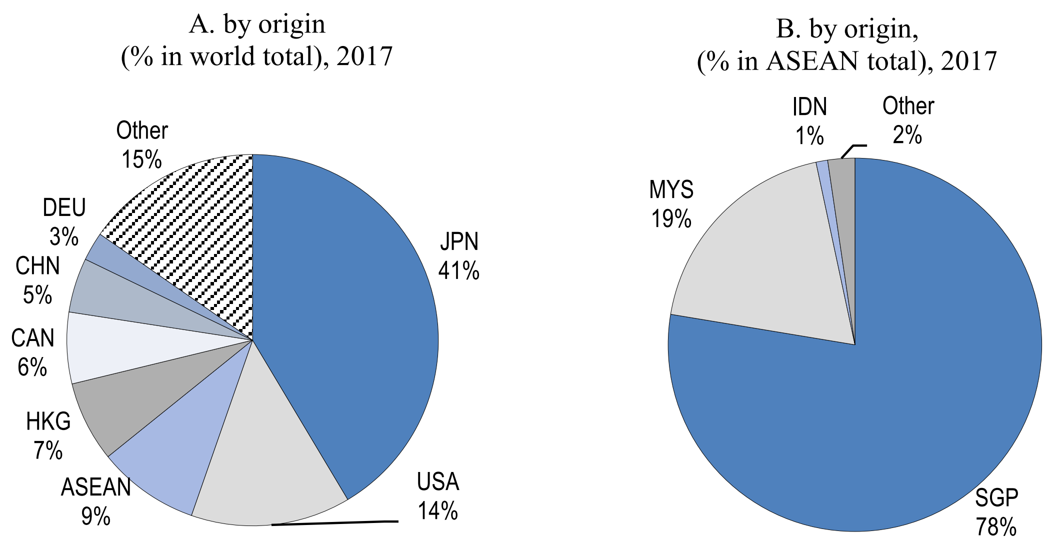


Source: OECD based on UNCTAD

Singapore is by far the largest investor from ASEAN, accounting for almost 80% of total FDI stocks from ASEAN (Panel B), although not all investment from Singapore is by Singapore-owned companies, as foreign MNEs also invest in Thailand, as well as in other countries in the region, through their Singapore operations (ASEAN, 2018). FDI from other AMS remains modest. Malaysia and Indonesia are the second and third largest investors from ASEAN, respectively. Together, they represented just 2% of Thailand's total inward FDI stocks in 2017.

Figure 4.3. Japan, the United States and Singapore are the main investors in Thailand

Cumulative sum of FDI flows between 2010 and 2017



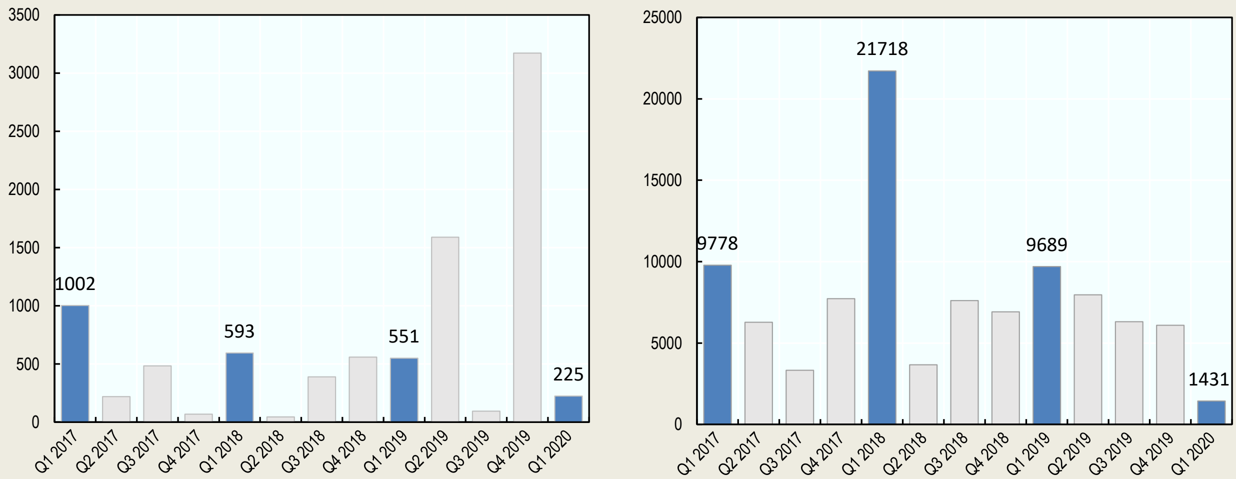
Source: OECD based on Bank of Thailand

Box 4.1. The impact of the COVID-19 pandemic on FDI flows in Thailand

Global FDI flows are expected to fall sharply as a consequence of the COVID-19 pandemic and the resulting supply disruptions, demand contractions, and uncertainty. OECD projections show that, even under the most optimistic scenario, global FDI flows will likely fall by at least 30 percent in 2020 compared to 2019 before returning to pre-crisis levels by the end of 2021 (OECD, 2020). The decline in FDI is expected to be even stronger in developing countries because sectors that have been severely affected by the pandemic represent a larger share of their FDI. The immediate impact on FDI flows will stem from a reduction in reinvested earnings, although equity capital flows will also be affected as companies put some M&As and greenfield projects on hold (OECD, 2020).

The latest data on cross-border M&As from the Refinitiv database show a significant drop in completed deals in the first quarter of 2020 in both Thailand and ASEAN as a whole (Figure 4.4). In Thailand, the value of cross-border M&As dropped by 60% relative to the first quarter of 2019 and by 63% relative to the first quarter of 2018. This decline was even sharper in ASEAN, where the value of cross-border M&A deals fell by 85% and 93% compared to the first quarters of 2019 and 2018, respectively.

Figure 4.4. Value of completed M&A deals, 2018-2020

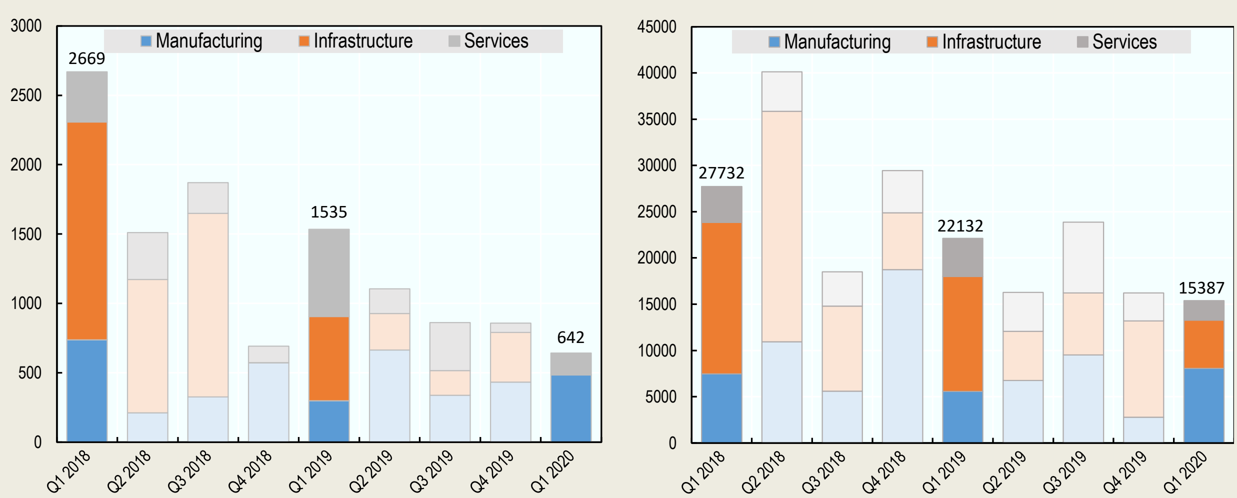


Source: OECD based on Refinitiv M&A database

The latest data on greenfield FDI from the Financial Times' fDi Markets database provide further evidence that investors are becoming more hesitant to explore new investment opportunities owing to the pandemic. In Thailand, the value of greenfield FDI pledges in the first quarter of 2020 dropped by 58% relative to 2019 and by 76% relative to 2018. This decline was less sharp in ASEAN, where FDI pledges decreased by 32% compared to 2019 and 46% compared to 2018 (Figure 4.5). A sectoral breakdown of greenfield investments shows that, both in Thailand and in ASEAN, infrastructure (construction, energy and ICT infrastructure) and services suffered the largest decline. Conversely, announced projects in manufacturing increased relative to 2019.

Figure 4.5. Value of announced greenfield investments by sector, 2018-2020

Announced capital expenditure, USD millions



Note: Infrastructure includes construction, energy and ICT infrastructure.
Source: OECD based on Financial Times fDi Markets (2020).

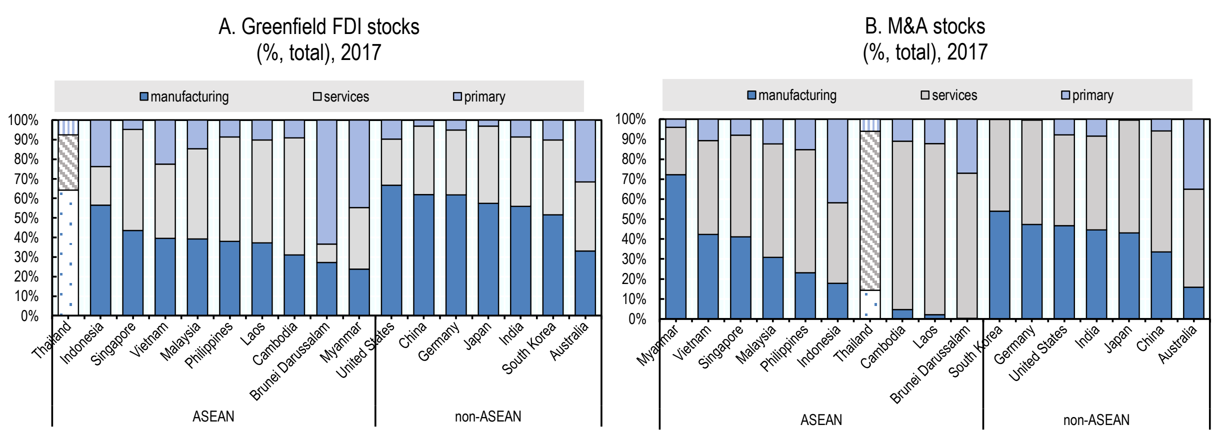
Greenfield FDI dominates manufacturing while M&A is prevalent in services

Greenfield investment and cross-border M&As are two important forms of direct investment undertaken by foreign firms. In Thailand, greenfield FDI is most prevalent in manufacturing (Figure 4.6, Panel A).[2] Its share of manufacturing in total greenfield FDI is the highest in the ASEAN region, but similar to that of other economies including the United States, China and Germany. Thailand's greenfield FDI in manufacturing is mainly explained by the dominance of Japanese firms, which have established operations in the automobile value chain and other industries since the mid-1980s.

The sectoral distribution of cross-border M&A reveals a different picture: only 15% of cross-border M&A goes to manufacturing (Panel B). Thailand's share is smaller than in most advanced ASEAN and non-ASEAN countries. Conversely, the share of services in cross-border M&A is significantly higher than in greenfield FDI. While services M&As tend to prevail over manufacturing in most countries, Thailand has one of the highest shares in services in the region.

The relative importance of cross-border M&A in services might be overstated in Thailand, as well as in other AMS. With a growing importance of services for value creation in manufacturing, a high services share in cross-border M&A may capture in part the services content of increasingly important regional value chains in manufacturing (ASEAN, 2017).

Figure 4.6. Greenfield FDI goes primarily to manufacturing, while M&A deals are prevalent in services

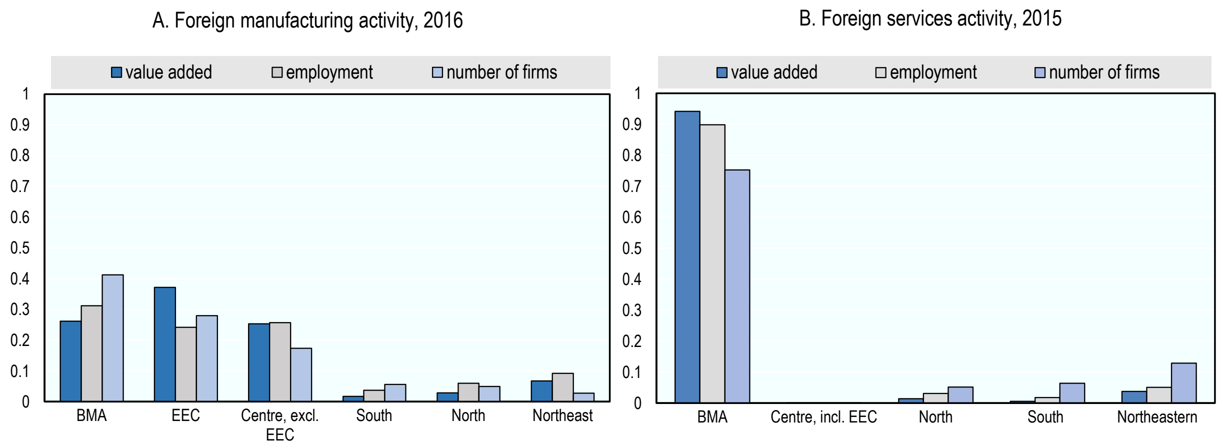


Note: Greenfield FDI data do not include agriculture.
Source: OECD based on Financial Times's fDi markets and Refinitiv M&A database.

…and manufacturing and services FDI is highly concentrated within Thailand

With respect to dispersion of FDI within Thailand, data show that foreign manufacturing activity, whether measured by value added, employment or number of firms, is concentrated in just three sub-national regions (Figure 4.7): Bangkok Metropolitan Area (BMA), Eastern Economic Corridor (EEC), and the rest of the Centre. Foreign activity in selected services is even more concentrated: above 70% of foreign services providers are located in BMA.[3] In addition, they account for about 90% of both total foreign services value added and foreign services employment. The high concentration of foreign firms in those regions is explained by economies of agglomeration such as better infrastructure, greater supply of labour, and accumulation of knowledge and skills.

Figure 4.7. Foreign activity is concentrated in BMA, EEC and the Centre



Note: BMA = Bangkok Metropolitan Area; EEC = Eastern Economic Corridor. Services include trade, hospitality and professional services.
Source: OECD based on Thailand's Industrial Census and Business Trade and Services Survey

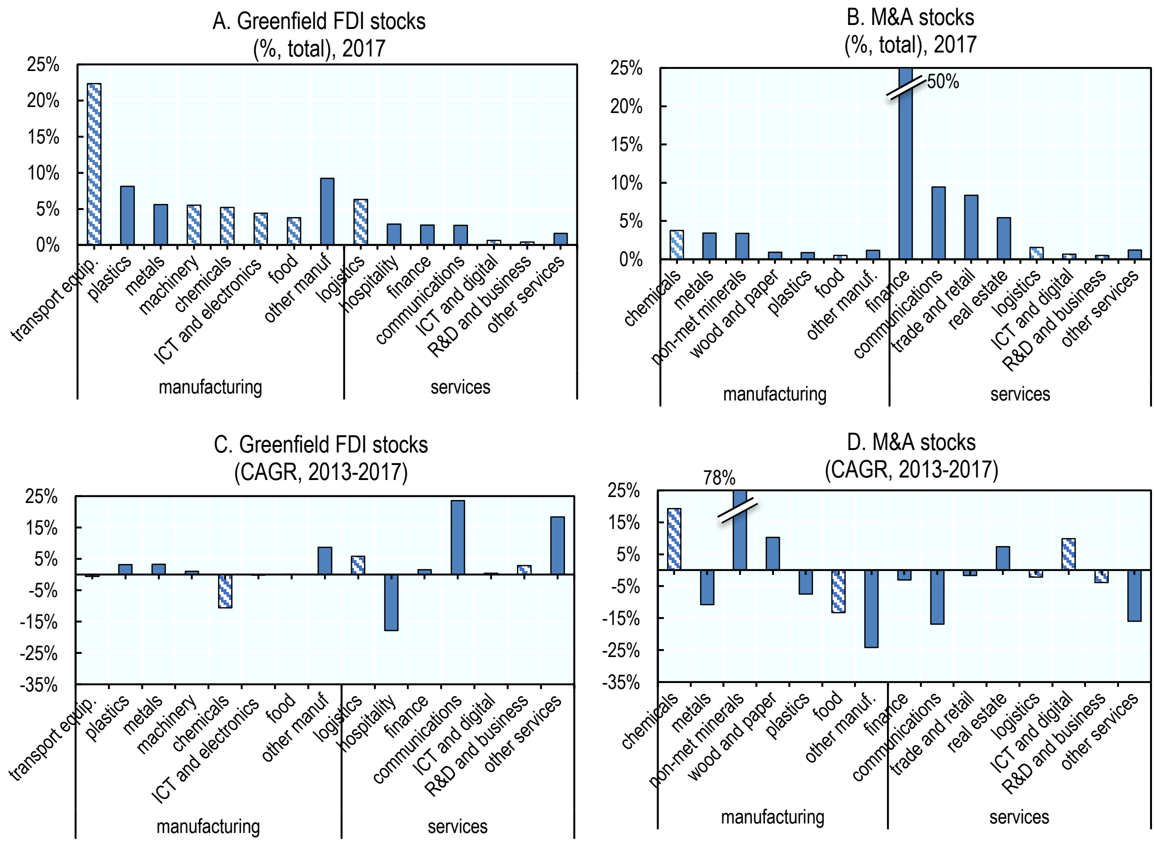
Modest FDI growth in sectors which Thailand would like to develop further

Key engines of growth and productivity in the Thailand 4.0 strategy comprise several manufacturing industries, namely (bio) fuels, (bio) chemicals, electronics, automotive, machinery (robotics), and food (Chapter 2). Activities targeted in those sectors cannot be singled out in broad FDI classifications, and they are not clearly defined in official documents. Nevertheless, assessing FDI trends in those broad industries provides an indication of the ability of Thailand to develop economic activity in those sectors, including by attracting foreign investors. Besides this set of manufacturing industries, Thailand 4.0 also promotes services activities that are important for advanced manufacturing production (e.g. ICT services and R&D) and some backbone services (e.g. logistics).

The data show that about half of greenfield FDI stocks are concentrated in approximated target sectors (Figure 4.8, Panel A). Transport equipment accounts for the largest share (22%), followed by machinery (5%), chemicals (5), ICT and electronics (4%) and food (4%). With the exception of logistics (6%), small shares are found in target services, namely ICT and digital (0.7%) and R&D and business (0.4%). The share of M&A stocks concentrated in approximated target sectors is modest (Panel B). Chemicals has the largest share (3.7%), followed by food (0.5%).

Growth rates of greenfield FDI and cross-border M&A deals in approximated target sectors and other target services indicate Thailand's performance in attracting foreign investors in sectors highly prioritised in its development strategy. Over 2013-17, the growth of greenfield FDI stocks in target sectors was modest or even negative (Panel C). Exceptions include logistics as well as R&D and business services where greenfield FDI stocks increased at an annual rate of 6% and 3%, respectively. During the same period, M&A stocks decreased in most target sectors and key services, with the exception of chemicals (20%) and ICT and digital (10%) (Panel D).

Figure 4.8. FDI growth was modest in approximated target sectors



Note: CAGR: compound annual growth rate. See calculation details here: https://www.investopedia.com/ terms/c/cagr.asp. Bars with diagonal stripes indicate targeted sectors under Thailand 4.0.
Source: OECD based on Financial Times's fDi markets and Refinitiv M&A database

The contribution of FDI to sustainable development in Thailand

Besides providing a source for financing, FDI may support sustainable development in the host country. FDI can contribute to the diversification of the economy; the provision of technology and knowledge; the development of the host country's skills base; a boost of productivity, and the establishment of linkages with local firms, which help them to access new markets and integrate in global value chains. Aside from the pure economic benefits, FDI can also support social and environmental goals, for instance by promoting responsible business conduct and the use of cleaner technology.[4]

The rest of this chapter investigates how FDI contributes to selected aspects of sustainable development (i.e. the Sustainable Development Goals, SDGs) highlighted in Thailand's current development model (Thailand 4.0). Thailand 4.0 aims to transform the country into a value-based economy where economic growth and living standards are driven by innovation, technology and talent. The model further addresses social and environmental challenges, including reducing social disparity, improving the education system, curbing CO_2 emission and increasing the country's ability to adjust to climate change. The analysis makes use of the new OECD FDI Qualities Indicators (Box 4.2).

Box 4.2. The OECD FDI Qualities Indicators

The OECD FDI Qualities Indicators describe how FDI relates to specific aspects of sustainable development in host countries. An in-depth assessment of all 17 SDGs, and their corresponding targets, was undertaken to identify the full spectrum of FDI Qualities – that is, areas where FDI may contribute to achieving the SDGs. This assessment further considers the extent to which FDI's potential for advancing the SDGs is reflected in the OECD Policy Framework of Investment (PFI), including related frameworks and guidelines, such as the OECD Guidelines on Multinational Enterprises and the OECD Policy Guidance for Investment in Clean Energy Infrastructure.

The FDI Qualities Indicators currently focus on five clusters; namely, productivity and innovation, employment and job quality, skills, gender equality, and carbon footprint. These clusters have been selected in consultation with various stakeholders of the FDI Qualities Policy Network, which includes policymakers, the private sector, the civil society, international organisations and the academia. For each of the five clusters, a number of different outcomes are identified and used to produce indicators that relate them to FDI or activity of foreign multinationals, allowing for comparisons both within and across clusters so as to identify potential sustainability trade-offs.

Taking into account the country-specific context, policymakers can use the FDI Qualities Indicators to assess how FDI supports national policy objectives, where challenges lie, and in what areas policy action is needed. Indicators also allow cross-country comparisons and benchmarking against regional peers or income groups, which, taking into account the country context, can help to identify good practices and make evidence-based policy decisions. Annex 4.A provides details on the methodology.

The OECD work on FDI Qualities will continue expanding over the next years. Main activities will include to develop an FDI Qualities Policy Toolkit to provide policy directions for the implementation of specific policy objectives; namely in the area of FDI (i) as a driver of productivity and innovation, (ii) an enabler of decent work (job quality, skills, gender inclusion), and (iii) a catalyst of climate change mitigation. The work aims at deepening the understanding of FDI Qualities and impacts in existing clusters through additional indicators and empirical analysis and measuring FDI Qualities in additional SDG-based clusters (such as agriculture, infrastructure, and income inequality).

Source: OECD (2019), FDI Qualities Indictors: Measuring the sustainable development impacts of investment, OECD Publishing, Paris, http://www.oecd.org/investment/fdi-qualities-indicators.htm

Foreign firms contribute positively to economic and social outcomes

Descriptive statistics show that affiliates of foreign firms established in Thailand perform better than Thai firms. Foreign manufacturers are larger and more productive than their Thai peers: on average they employ 12 times more workers and have 15 times higher sales (Table 4.1). They pay higher wages and hire more skilled workers. Foreign manufacturers are also more integrated in GVCs, as shown by their higher export and import intensities. Foreign services providers also appear to have a premium relative to domestic firms; they report higher sales and employment, pay better wages, and are more productive.

Table 4.1. Foreign firms perform better than Thai firms

Differences between foreign and domestic firms in Thailand, comparative statistics

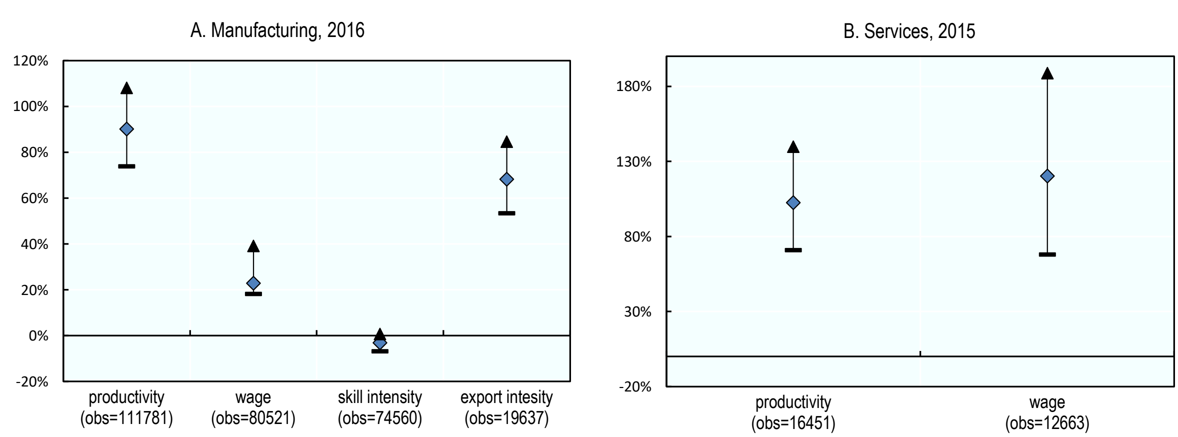
	Manufacturing (2016)		Services (2015)	
	Domestic	Foreign	Domestic	Foreign
Sales (in mln USD)	3.4	51.3	3.2	31.9
Number of workers	25.8	317.2	12.6	54.9
Average wage (USD)	2238	6860	12118	31093
Skilled workers (% of total number of workers)	38.5	56.7	-	-
Labour productivity (USD)	15602	64721	29700	95032
Export intensity (%)	43.6	53.2	-	-
Import intensity (%)	39.6	45.1	-	-

Note: Labour productivity: value added per employee; Export intensity: share of production that is exported; Import intensity: share of intermediate inputs that are imported.
Source: Thailand's Industrial Census and Business Trade and Services Survey

The positive contribution of foreign firms to the Thai economy holds even when controlling for firm size and sector-specific factors. Empirical analysis suggests that foreign ownership is significantly and positively associated with firm productivity, wages and export intensity independent of firm size and sector (Figure 4.9, Panel A). Foreign ownership is associated with 90% higher productivity in manufacturing, more than 20% higher wages, and about 70% higher export intensity. But foreign ownership has no significant impact on the share of skilled workers, possibly suggesting that firm scale and sector-specific factors are more relevant to explain differences in skill intensity between domestic and foreign firms. Foreign ownership is also significantly and positively correlated with productivity and wages in a sample of services firms (Panel B). Foreign ownership raises productivity of services providers by 100% and their wages by 120%.

Figure 4.9. Foreign ownership has a significant and positive effect on firm performance

Impact of foreign ownership on firm performance



Note: The figures show percentage impacts estimated from regression models and their respective 95% confidence interval. Dependent variables (e.g. productivity) are in logarithms. Foreign ownership is a dummy variable that takes value 1 if the investor owns directly 10% or more of the ordinary shares or voting power and 0 otherwise. All regressions control for firm size and sector fixed effects.
Source: OECD based on Thailand's Industrial Census and Business Trade and Services Survey.

There are a number of reasons why foreign firms may perform differently than domestic firms. The theoretical literature for instance predicts that, due to the fixed cost of investing abroad, foreign firms tend to be larger and more productive than purely domestic firms (Melitz, 2003; Helpman et al. 2004). Another argument emphasises the notion of foreign firms being technologically more advanced than domestic firms. This argument is backed by several empirical studies, which find that foreign firms tend to have a productivity premium over domestic firms (OECD, 2019).

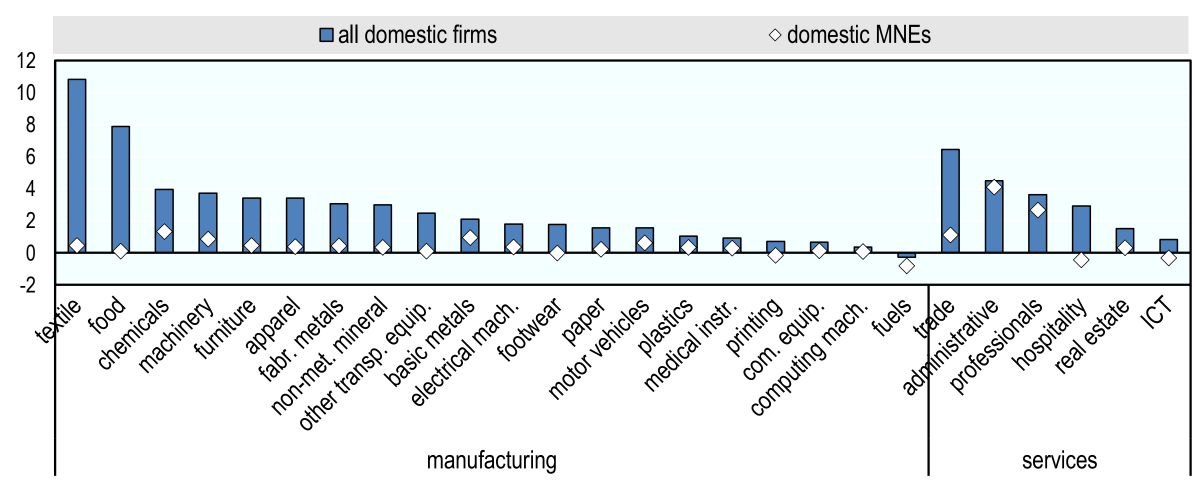
Foreign firms' contribution to productivity varies considerably across sectors

A key objective of Thailand 4.0 is to boost productivity in existing manufacturing capabilities. An indicator compares the productivity performance of foreign and domestic firms, providing an indication of the direct contribution of foreign firms to domestic productivity. The indicator shows that foreign firms enjoy a productivity premium across most manufacturing sectors (Figure 4.10). Foreign premiums are larger in low-tech sectors, namely textile and food, possibly due to the higher capital intensity of foreign firms in those sectors. For instance, in textile, foreign firms are more than 10 times as productive as Thai firms, whereas in computing machinery, a more technology-intensive sector, the productivity premium of foreign firms is much lower. Productivity differences are significantly lower when comparing foreign firms with domestic multinational enterprises (MNEs)[5], which suggests that firm size is an important factor of firm-level productivity.

Foreign services firms are, on average, also more productive than Thai firms. The largest productivity premium is observed in trade where foreign firms are 7 times as productive as Thai firms, while the smallest is found in ICT services where foreign firms are half as productive. In several services sectors, namely trade, administrative activities, and professional services, a foreign productivity premium exists even when comparing foreign firms only with domestic MNEs.

Figure 4.10. Foreign firms are more productive than domestic firms in most sectors

Are foreign firms more productive than domestic firms? (yes if value >0; no if value <0)

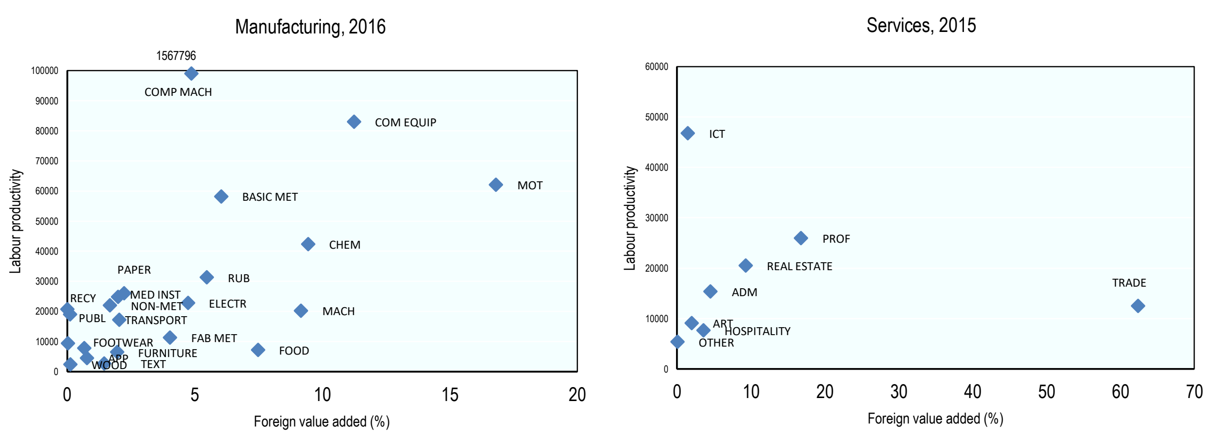


Note: The chart shows a type 1 indicator, see Box 4.2 for a description of the methodology. Labour productivity: value added per employee. Tobacco, wood, recycling, arts and other services are not shown as the sample of foreign firms contains less than 10 observations. Domestic MNEs are domestic companies with more than 200 employees. Services include trade, hospitality and professional services.
Source: OECD based Thailand's Industrial Census and Business Trade and Services Survey

Foreign firms' productivity premia across sectors confirm a direct and positive contribution of foreign firms to the Thai economy. At the same time, large productivity differences between foreign and domestic firms may show a lack of domestic capabilities. In the economic literature, the productivity gap between foreign and domestic firms is often used as a proxy for absorptive capacity, which is the ability of domestic firms to use and absorb technology and knowledge from foreign firms (OECD, 2019).

Plotting sectoral FDI data (measured by the share of total foreign firm value added) and labour productivity shows whether FDI is concentrated in more (or less) productive sectors. The results show that FDI is concentrated in relatively more productive sectors, namely motor vehicles, communication equipment, and chemicals (Figure 4.11). These sectors are more productive due to their higher technology intensity. A higher concentration of FDI in more productive sectors is found also in services, albeit with some exceptions. For instance, ICT services are significantly more productive relative to other sectors, nevertheless the amount of FDI going to this sector is modest. On the contrary, trade appears to be less productive than other services sectors, but it captures a large share of FDI.

Figure 4.11. FDI is concentrated in sectors that are more productive



Note: Labour productivity: value added per employee. Services include trade, hospitality and professional services
Source: OECD based on Thailand's Industrial Census and Business Trade and Services Survey.

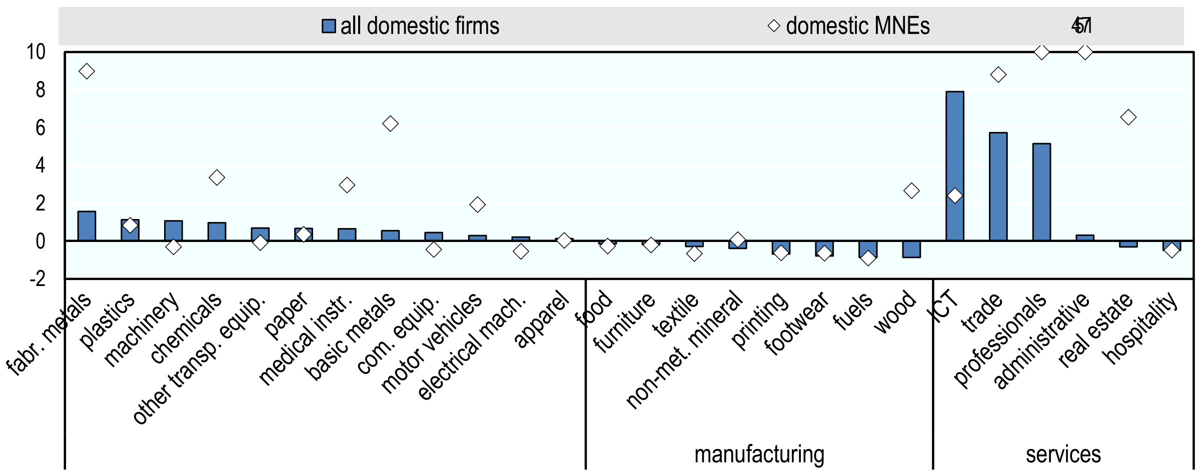
Foreign firms invest more in R&D, especially in high-tech sectors

Thailand 4.0 emphasises the importance of innovation and investment in research and development (R&D) for supporting productivity growth and shifts towards higher-value added activities. Existing studies provide mixed evidence on the contribution of FDI to innovation and R&D in host countries (OECD, 2019). Better access to capital and knowledge through the parent company may induce foreign subsidiaries to invest more in R&D compared to domestic firms. On the other hand, foreign subsidiaries may have access to technologies from the parent company, which may reduce the incentive to spend on R&D. Apart from spending on R&D, foreign firms may also support innovation in host countries by transferring technology and knowledge to domestic firms.

An indicator compares R&D performance of foreign firms to that of domestic firms and shows that foreign firms tend to spend more on R&D than domestic firms, especially in high-tech sectors (Figure 4.12). A R&D premium of foreign firms is found in several services sectors including ICT, trade and professional services. Conversely, foreign firms are less R&D-intensive compared to domestic firms in low-tech sectors. Considerable foreign premia also exist relative to domestic MNEs in some high and medium-tech sectors (fabricated metals, chemicals, medical instruments, basic metals, motor vehicles) and most services sectors.

Figure 4.12. Foreign firms spend more on R&D in higher value added sectors and in services

Do foreign firms spend more on R&D per employee relative to domestic firms? (yes if value >0, no if value <0)

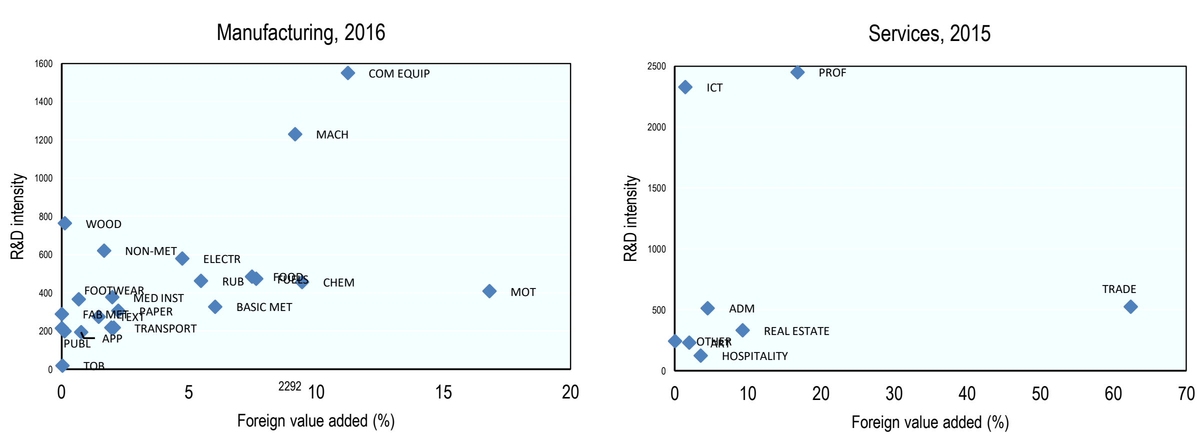


Note: The chart shows a type 1 indicator, see Annex 4.A for a description of the methodology. In services, R&D expenditure includes training costs. Tobacco, computing machinery, recycling, arts and other services are not shown as the sample of foreign firms contains less than 10 observations. Domestic MNEs are domestic companies with more than 200 employees. Services include trade, hospitality and professional services.

Source: OECD based Thailand's Industrial Census and Business Trade and Services Survey.

FDI also plays an important role for boosting Thailand's innovation capacity as it is concentrated in sectors that spend more on R&D (Figure 4.13). The positive relationship between FDI and R&D intensity holds both for manufacturing and services. High-tech sectors such as communication equipment, machinery, chemicals receive higher shares of FDI and are also more R&D-intensive relative to low-tech sectors, for instance textile and footwear. Within services, ICT and trade are two exceptions. ICT has a high R&D intensity but attracts less FDI and the opposite holds for trade.

Figure 4.13. FDI is prevalent in sectors that spend more on R&D



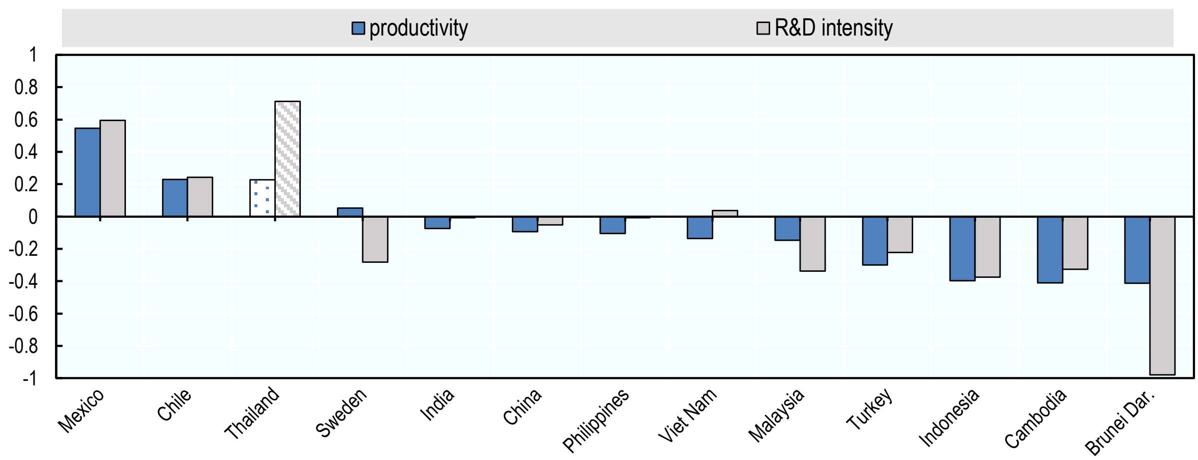
Note: R&D intensity: expenditure on R&D per employee. In services, R&D expenditure includes training costs. Services include trade, hospitality and professional services.

Source: OECD based on Thailand's Industrial Census and Business Trade and Services Survey.

A positive relationship between FDI, productivity and R&D intensity is also found in several OECD economies, particularly Mexico and Chile (Figure 4.14). By contrast, FDI is prevalent in less productive and innovative sectors in regional peers including China, the Philippines, Malaysia, Indonesia, Cambodia and Brunei Darussalam.

Figure 4.14. FDI is concentrated in less productive and less R&D-intensive sectors in other countries in the region

Is FDI concentrated in more productive/R&D intensive sectors?



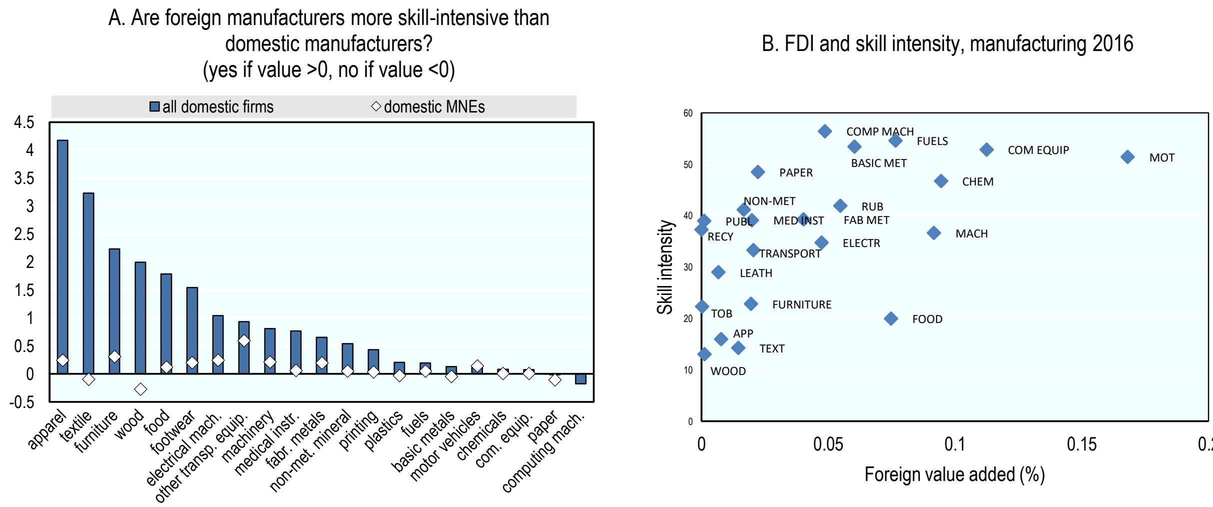
Note: The chart shows a type 2 indicator, see Box 4.2 for a description about the methodology. Labour productivity: value added per employee; R&D intensity: share of firms that invest in R&D.
Source: OECD based on World Bank Enterprise Survey.

FDI contributes to skill development in Thailand

Enhancing skills is high on Thailand's policy agenda. Skills are key for an economy which seeks to grow based on innovation and to compete in higher value added activities (Chapter 3 and 5). They are also important to reduce social disparities and provide equal opportunities to all members of society. A vast body of research shows that foreign firms tend to be more skill-intensive relative to local firms, due to their higher technology intensity, and that they often bring technology which are complementary to skills (i.e. skill-biased technical change). Case studies also show that foreign firms often contribute to skill development in host countries by providing training to their employees or to the employees of domestic partner companies, for instance to ensure the quality and reliability of inputs (OECD, 2019).

The indicators confirm the presence of skill premia of foreign firms in most manufacturing sectors (Figure 4.15, Panel A). They are, however, much smaller or even negative when comparing foreign firms with domestic MNEs. This finding is consistent with the evidence that foreign ownership has no significant effect on the share of skilled labour, once differences in firm size are accounted for (Figure 4.9). Furthermore, foreign skill premia are larger in low-tech industries namely apparel, textile, wood. Sectors with higher foreign skill premia are also those with larger foreign productivity premia (Figure 4.10). Additionally, FDI is more prevalent in manufacturing sectors that employ higher shares of skilled workers (Figure 4.15, Panel B). As expected, these are sectors with higher technology intensity, which are also more productive and innovative.

Figure 4.15. Foreign manufacturers have a skill premium and operate in more skill-intensive sectors

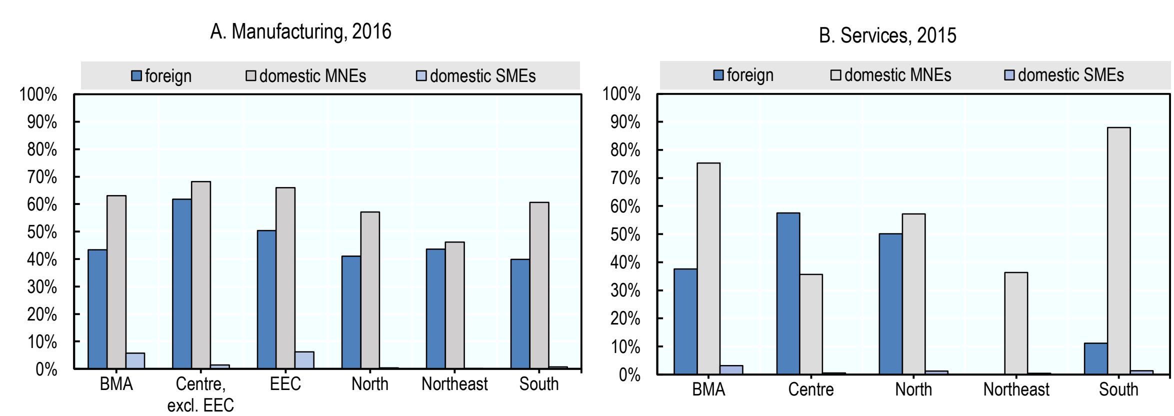


Note: The chart in Panel A shows a type 1 indicator; the chart in Panel B shows a type 2 indicator, see Annex 4.A for a description of the methodology. Domestic MNEs are domestic companies with more than 200 employees. Tobacco and recycling are not shown as the sample of foreign firms contains less than 10 observations. Panel B: Skill intensity: share of skilled workers over total workers.
Source: OECD based on Thailand's Industrial Census.

The indicators also show that foreign firms contribute significantly to skill development in Thailand. Over 40% of foreign firms in manufacturing report investing on staff training across all Thai regions (Figure 4.16, Panel A). This share is considerably higher than that reported by domestic small and medium enterprises (SMEs), although smaller than that of domestic MNEs. Such differences are not surprising, as foreign firms tend to be larger and, therefore, may have more resources to budget training activities than smaller firms. In the case of Thailand, the legal requirement introduced by the Skill Development Promotion Act B.E. 2002 according to which establishments with at least 100 employees must provide in-house training, also explains the observed differences between SMEs and large firms.[6] The share of foreign services providers with expenditure on training is also above 40% in most regions (Panel B).

Figure 4.16. Across most regions, over 40% of foreign companies report investing on staff training

Firms with expenditure on training (% total)



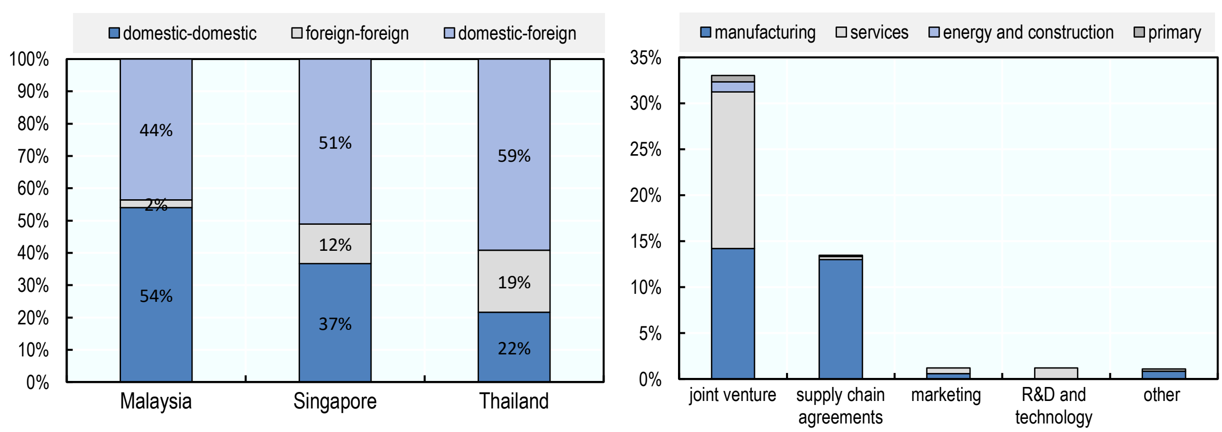
Note: In services, R&D expenditure includes training costs. Services include trade, hospitality and professional services
Source: OECD based on Thailand's Industrial Census and Business Trade and Services Survey.

Thai firms with foreign business linkages are more productive

Business linkages between foreign firms and domestic firms can be an important channel for the transfer of technology, knowledge and skills. Business linkages can take many forms. They may involve partnerships formalised with contracts such as joint ventures, contract manufacturing, marketing agreements, R&D collaborations as well as less formal agreements like technical support or training offered as part of supply-chain arrangements. Business linkages can benefit local firms in multiple ways: they enable them to acquire new technology, develop new skills including managerial skills, create new products, improve the quality of existing products, and reduce costs through better allocation of resources (OECD-UNIDO, 2019).

Close to 60% of the reported partnerships in Thailand over 2010-16 were between foreign and domestic companies (Figure 4.17, Panel A). This share is larger than in Singapore (51%) and Malaysia (44%). Joint ventures are the most frequent form of partnerships between foreign and domestic firms (Panel B), which could be partly driven by foreign equity restrictions required by the Foreign Business Act (Chapter 6). Supply-chain agreements are also observed relatively often, while other forms of partnerships (including marketing and R&D and technology collaborations) are reported less frequently. Joint ventures are chosen by both manufacturing and services companies but R&D and technology agreements are used exclusively by services providers.

Figure 4.17. The share of partnerships between domestic and foreign firms is higher in Thailand than in Malaysia and Singapore

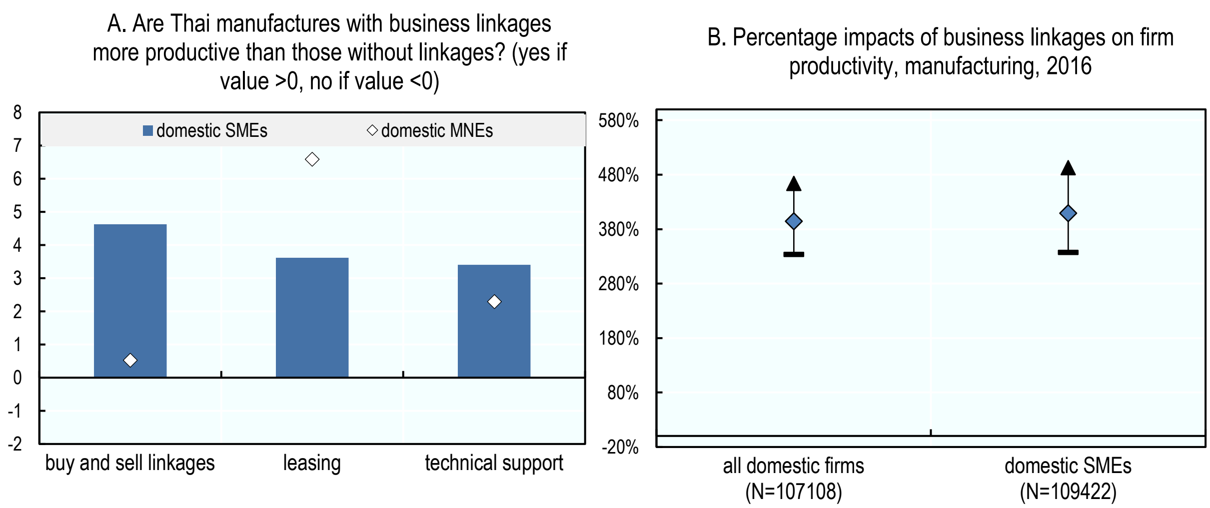


Note: The sample for Thailand includes 240 alliances between companies developed during the period 2010-2016. For Singapore the sample includes 180 alliances, while for Malaysia 211 Joint venture: an entity created by two or more companies to undertake a specific investment project, generally characterized by shared ownership. Supply chain agreements: contracts between two or more companies to agree on supply and buy commitments. Marketing: contracts between two or more companies to collaborate on marketing, branding and advertising activities. R&D and technology: contracts between two or more companies to carry out research and development, generally for new product development.
Source: OECD based Thomson Reuters's strategic alliances database.

Furthermore, Thai firms that develop business linkages with foreign firms have, on average, a productivity premium relative to Thai firms that do not (Panel A, Figure 4.18). Thai firms that are able to establish linkages with foreign firms are most likely those that have higher capacities and are thus more productive even before engaging in linkages. Linkages may further enhance their performance through knowledge transfers. Thai SMEs that develop buy and sell linkages are 6 times as productive as Thai SMEs without linkages. Similarly, Thai SMEs that engage in leasing contracts with foreign firms are 5 times as productive, whereas those that received technical support from foreign firms are 4 times as productive. With the exception of leasing, smaller productivity premiums are found for Thai MNEs that develop foreign linkages, possibly suggesting that productivity gains related to business linkages with foreign firms are smaller for large firms.

Empirical analysis confirms the positive correlation between foreign business linkages and Thai firms' productivity (Panel B). In particular, foreign business linkages are found to increase productivity of Thai firms by almost 390%. The magnitude of the impact is even higher for domestic SMEs, 410%, consistent with the above finding that domestic SMEs with linkages experience higher productivity gains than large domestic companies.

Figure 4.18. Business linkages with foreign firms have a positive effect on Thai firms' productivity



Note: Panel A: The chart shows a type 1 indicator, see Annex 4.A for a description of the methodology. Buy and sell linkages: agreements to buy or sell intermediate inputs and services. Leasing: contracts by which an owner of a specific asset (e.g. land) grants a second party the right to its exclusive possession under agreed terms. Technical support: forms of assistance such as staff training or quality support assistance. Panel B: The figure shows percentage impacts estimated from regression models and their respective 95% confidence interval. Dependent variables are in logarithms. Business linkages is a dummy variable that takes value 1 if the company has a linkage with a foreign company and 0 otherwise. All regressions control for sector fixed effects. Domestic SMEs are domestic companies with less than 200 employees.
Source: OECD based on Thailand's Industrial Census.

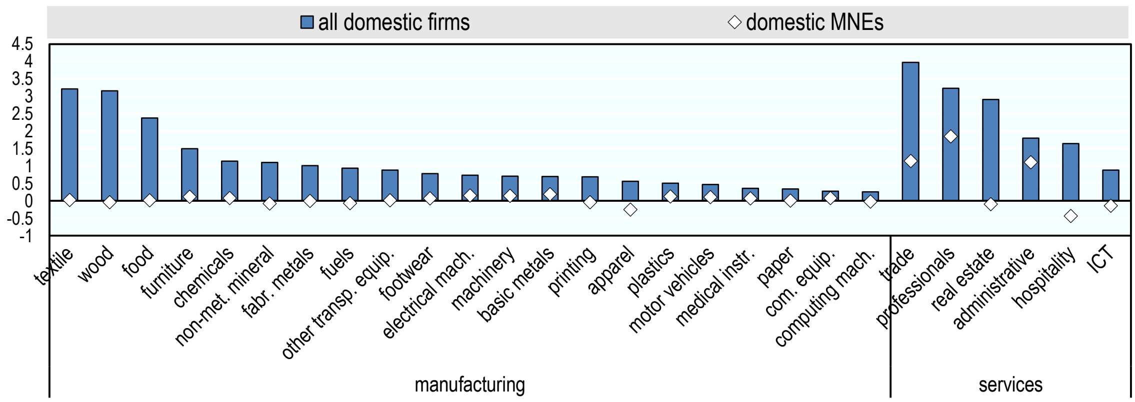
Foreign firms pay higher wages and employ more women

The importance of decent work, including adequate wages and gender equality, is embedded in the SDGs and well reflected in the objectives of social well-being and raising human capital under the Thailand 4.0 concept. A large body of empirical evidence shows that foreign companies may affect labour market outcomes in host countries, including workers' earnings and gender outcomes (OECD, 2019).

With respect to workers' earnings, the indicators show that foreign firms pay higher wages than Thai firms across all manufacturing sectors (Figure 4.19). Foreign wage premia are higher in low-tech sectors. For instance in food, foreign firms pay 4 times higher wages relative to domestic firms (foreign firms have a wage premium of 3), while in motor vehicles foreign firms pay 50% higher wages than domestic firms. The wage premia of foreign firms are smaller or even negative compared to domestic MNEs. Foreign firms are also paying higher wages in selected services. They are higher in trade, professional services and real estate and in most services sectors they exist also relative to domestic MNEs. As expected, foreign wage premia tend to mirror foreign productivity premia: sectors where foreign firms are more productive are also those where they pay higher wages relative to domestic firms.

Figure 4.19. Foreign firms have a wage premium in all sectors

Do foreign firms pay higher wages relative to domestic firms? (yes if value >0, no if value <0)

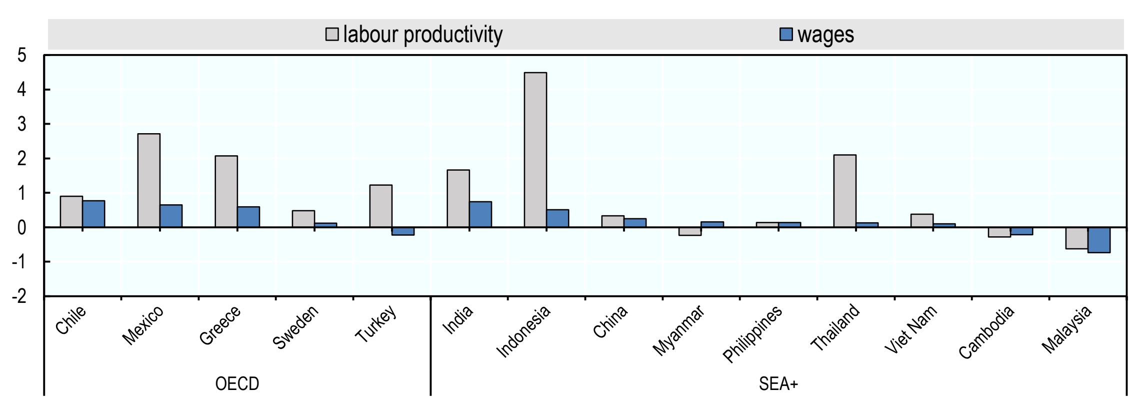


Note: The chart shows a type 1 indicator, see Annex 4.A for a description of the methodology. Wages: average wage per employee. Domestic MNEs are domestic companies with more than 200 employees. Apparel, recycling, arts and other services are not shown as the sample of foreign firms contains less than 10 observations.
Source: OECD based Thailand's Industrial Census and Business Trade and Services Survey.

Foreign firms also enjoy a wage premium in other Asian and OECD countries (Figure 4.20). For instance in India and Indonesia, foreign firms pay on average 50% higher wages than their domestic peers. The premium is smaller in other Asian countries, including Thailand where foreign firms pay on average 20% higher wages. Overall, the wage differences between foreign and domestic firms mirrors important productivity gaps observed in these countries: the larger the productivity gap between foreign and domestic firms, the higher the wage premium of foreign firms. In some countries, including Thailand, the productivity premium is considerably higher than the observed wage premium, showing that a foreign productivity premium may not automatically translate into higher wages for workers – although other factors such as capital intensity may also explain this discrepancy.

Figure 4.20. In most regional peers foreign firms enjoy a wage premium

Do foreign firms are more productive/ pay higher wages relative to domestic firms? (yes if value >0, no if value <0)

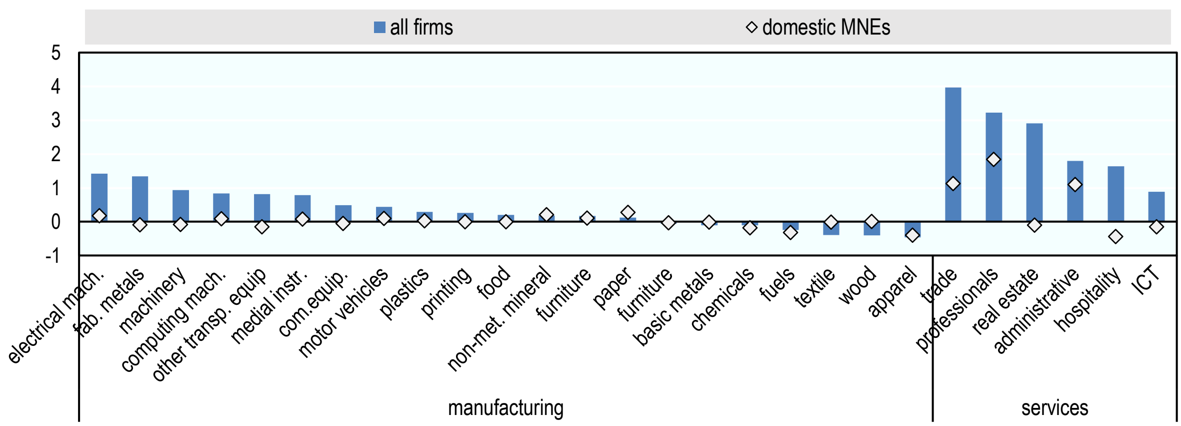


Note: The chart shows a type 2 indicator, see Annex 4.A for a description of the methodology. Labour productivity: sales per employee; Wage: average labour cost per employee. SEA +: South East Asia countries including India and China.
Source: OECD based on the World Bank Enterprise Survey.

With respect to gender equality, foreign firms tend to employ higher shares of women relative to Thai firms, except in several low-tech sectors (footwear, textile, wood and apparel) and chemicals (Figure 4.21). Differences in female employment shares between foreign and domestic firms are higher in high-tech sectors. For instance in electrical machinery, the share of female workers in foreign firms was twice as high as in Thai firms, compared to a 50% premium in food. Foreign firms have considerably higher shares of women in services. As expected, differences in female employment shares are smaller between foreign companies and domestic MNEs.

Figure 4.21. Foreign firms employ larger shares of women in high-tech sectors and in services

Do foreign firms employ larger shares of women relative to domestic firms? (yes if value >0, no if value <0)



Note: The chart shows a type 1 indicator, see Annex 4.A for a description of the methodology. Domestic MNEs are domestic companies with more than 200 employees. Recycling, arts and other services are not shown as the sample of foreign firms contains less than 10 observations.
Source: OECD based Thailand's Industrial Census and Business Trade and Services Survey.

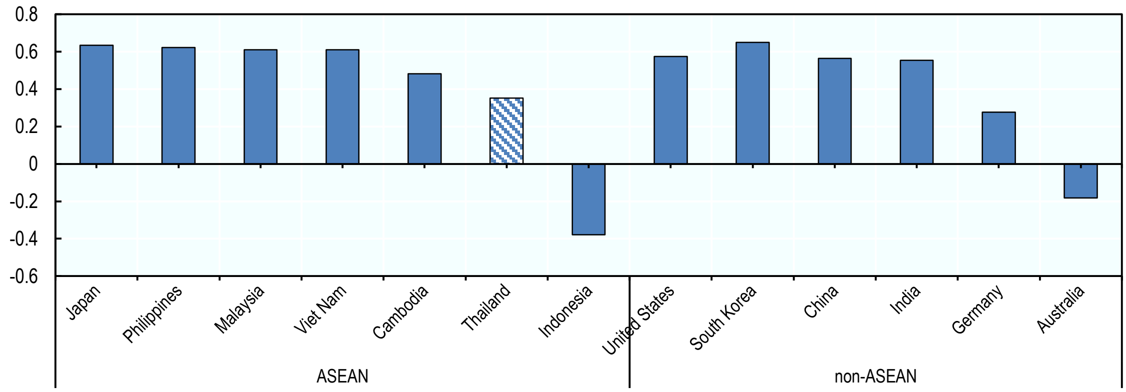
FDI is prevalent in cleaner and less CO_2-emitting sectors

Rapid industrialisation and urbanisation have increased environmental pressures in Thailand (Chapter 2 and 10). Despite some progress in terms of environmental performance, several challenges remain, including curbing CO_2 emissions, mitigating floods, and managing land and water resources (OECD, 2018), and promoting renewable energy to keep up with rising energy demand. The protection of the environment is a key objective of Thailand 4.0. The strategy envisages the development of an economy that is capable of adjusting to climate change and supports a low carbon society.

An indicator examines whether greenfield FDI is found in sectors that generate higher (or lower) CO_2 emissions per unit of output, relative to the overall economy (Figure 4.22). It shows that in most ASEAN countries, including Thailand, FDI is prevalent in cleaner sectors in terms of CO_2 emissions. Exceptions include resource-rich countries like Indonesia and Australia. For instance, in Indonesia a large share of FDI goes to iron and steel manufacturing (22%).

Figure 4.22. In Thailand, FDI is concentrated in less emitting sectors

Is greenfield FDI concentrated in sectors that generate less CO2 emissions? (yes if value >0, no if value <0)

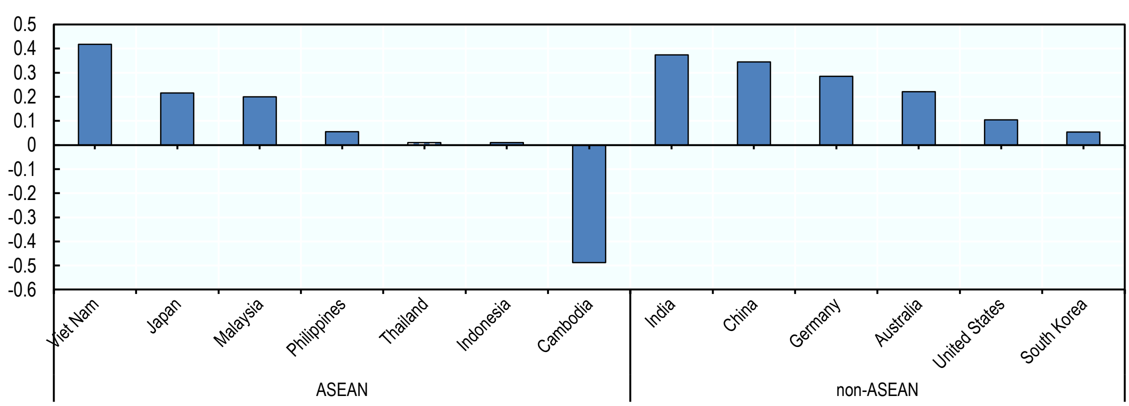


Note: The chart shows a type 2 indicator, see Annex 4.A for a description of the methodology.
Source: OECD based on Financial Times' fDi Markets database; OECD Input-Output Tables; International Energy Agency's World Energy Statistics and CO2 Emissions database.

Increasing energy efficiency is essential to mitigate climate change in the long run, especially with rising global energy demand. Another indicator shows the extent to which FDI is concentrated in more (or less) energy-efficient sectors (i.e. sectors with lower sales per energy cost) (Figure 4.23). In most ASEAN countries, FDI is prevalent in more energy efficient sectors. In Thailand and Indonesia, however, the correlation between sectoral FDI and energy efficiency is broadly absent. In Cambodia, the relationship is even negative, that is, FDI is concentrated in relatively less energy efficient sectors, relative to the rest of the economy.

Figure 4.23. In most ASEAN countries FDI is prevalent in more energy-efficient sectors

Is FDI concentrated in activities which are more energy efficient? (yes if value>0, no if value<0)

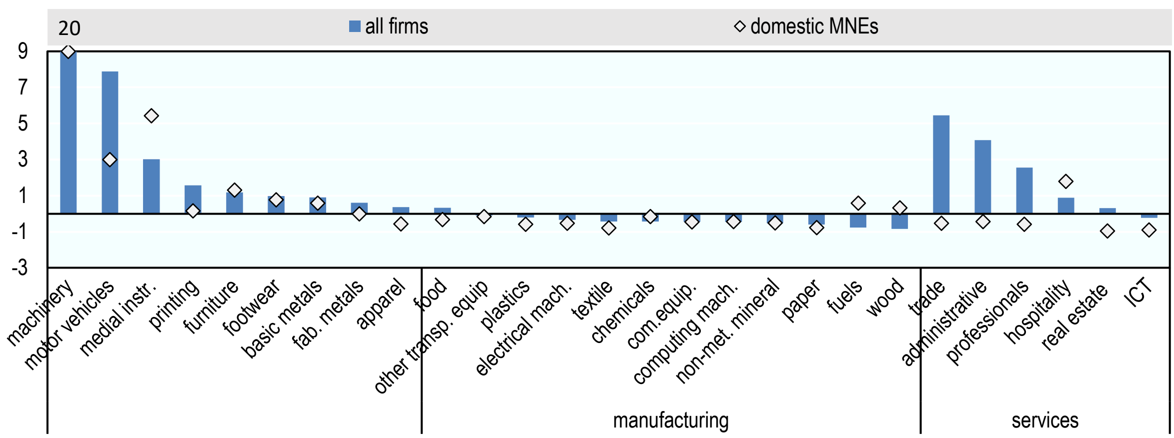


Note: The chart shows a type 2 indicator, see Annex 4.A for a description of the methodology. Energy efficiency: sales over electricity and heat costs.
Source: OECD based on Financial Times' fDi Markets database; OECD Input-Output Tables; International Energy Agency's World Energy Statistics and CO2 Emissions database.

An indicator based on firm-level information allows to see whether foreign investors raise energy efficiency in Thailand, for example by bringing cleaner or energy-saving technologies. The indicator compares energy efficiency of foreign firms with Thai companies across both manufacturing and services. The results show that foreign firms are more energy efficient than Thai firms, especially in higher value added sectors, namely machinery, transport equipment and medical instruments, but they tend to underperform Thai firms in low-tech sectors, notably wood, paper, textile (Figure 4.24). Foreign firms are more energy efficient than Thai firms in all services sectors. When taking into account differences in firm size, such foreign environmental premia decrease in most sectors with several exceptions, including machinery, motor vehicles a medical instruments.

Figure 4.24. Foreign investors are more energy efficient in high-tech sectors and services

Are foreign firms more energy-efficient than Thai firms? (yes if value >0, no if value<0)



Note: The chart shows a type 1 indicator, Annex 4.A for a description of the methodology. Domestic MNEs are domestic companies with more than 200 employees. Tobacco, recycling, arts and other services are not shown as the sample of foreign firms contains less than 10 observations.
Source: OECD based Thailand's Industrial Census and Business Trade and Services Survey.

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Annex 4.A. FDI Qualities Indicators: Methodology

Three types of indicators relating FDI to sustainable development have been developed. The full description of the indicators, including caveats and limitation are discussed in OECD (2019). Two types of indicators, which are described below, are used in this chapter.

Indicator Type 1

Type 1 indicators measure how foreign firms perform relative to domestic firms for a given outcome (e.g. labour productivity). It takes positive value if foreign firms have higher outcomes than domestic firms and negative value if foreign firms have lower outcomes, on average. The indicator is constructed as the proportional difference between average outcomes of foreign firms and average outcome of domestic firms:

$$Type\ 1 = (\bar{Y}_F - \bar{Y}_D)/\ \bar{Y}_D$$

where $\overline{YF}$ is the average outcome of foreign firms and $\overline{YD}$ is the average outcome of domestic firms, and population averages are calculated using survey weights.

Indicator Type 2

Type 2 indicators show whether FDI is concentrated in sectors with higher or lower sustainable development outcomes, while controlling for the economic size of each sector.

This indicator type requires sector-level information on FDI, GDP, and the development outcome considered (e.g. average wages), and compares two sector-weighted averages. The first weighted average (the “FDI-weighted” outcome) is a function of sector-level GDP and FDI. The second weighted average (the “baseline” outcome) only uses sector-level GDP shares as weights. The indicator is constructed as the proportional difference between the FDI-weighted and baseline outcomes:

$$Type\ 2 = \frac{\sum_s \omega_s Y_s - \sum_s \delta_s Y_s}{\sum_s \delta_s Y_s},$$

$$\omega_s = \frac{1}{\sum_s \frac{FDI_s}{FDI_{TOT}} \frac{GDP_s}{GDP_{TOT}}} \left(\frac{FDI_s}{FDI_{TOT}} \frac{GDP_s}{GDP_{TOT}} \right),$$

$$\delta_s = \left(\frac{GDP_s}{GDP_{TOT}} \right)$$

where Y_s is the average outcome of sector *s*; ω_s is the weight corresponding to sector *s* constructed using the product of the GDP share and the FDI share of sector *s*; δ_s is the GDP share of sector *s*. By controlling for sector-level GDP, the indicator provides information on the extent to which the relative distribution of FDI across sectors relates to economy-wide outcomes. The indicator takes positive value if the FDI-weighted outcome is higher than the baseline; and vice versa.

Notes

[1] Thailand's share of ASEAN FDI excluding Singapore declined slightly over the same period.

[2] Greenfield investment involves the creation of a new asset coming under the control of the foreign firms, while M&A deals consist of a transfer of existing assets from local companies.

[3] Services include trade, hospitality and professional services, but exclude other important services such as logistics, storage, and financial services.

[4] Around the globe MNEs, including many Thai companies, are increasingly integrating sustainable development considerations and targets in their business practices. For example, the Thai Corporate Governance Code for Listed Companies 2017 includes principles of social and environmental responsibility for business, inspired by the G20/OECD Principles of Corporate Governance. These principles reiterate the importance for listed companies to embrace environmental, social and governance issues to enhance their sustainability impact and ultimately contribute to the implementation of the SDGs.

[5] Domestic MNEs are domestic companies with more than 200 employees.

[6] The Skill Development Promotion Act B.E. 2002 requires establishments with at least 100 employees to provide in-house training at the rate of 50% of the total number of employees. Failure to comply entails the payment to the Skill Development Fund of approximately THB 1,178.80 per head per year for the number of untrained employees.

5 Investment promotion policies to build a knowledge-based economy

This chapter analyses investment promotion and facilitation policies in Thailand, examines the institutional framework for investment promotion and facilitation, with a focus on the role and activities of the BOI, highlights key reforms and measures implemented by the government to attract investment and improve the business environment, identifies remaining challenges and proposes recommendations to address them. The chapter also describes the key characteristics of promoted firms and explores their impact on building a knowledge-based economy. It focuses on the four pillars of the 2015-21 investment promotion strategy: productivity enhancement, technology and innovation, human capital and foreign talent, and the development of specific regions.

Summary

Investment promotion and facilitation policy in Thailand has an impressive record in attracting foreign and domestic investments. It has enabled Thailand to attract businesses that have deeply shaped the economic landscape, contributing to the emergence of new industries such as the automotive sector. Recently, the effectiveness of these policies in building a more resilient and knowledge-based economy, supporting technological progress, closing the skills gap and reducing income and territorial inequalities has become a growing priority of the government, and even more so following the COVID-19 outbreak. Overall, promoted companies' weight in the Thai economy is colossal and they are pivotal for enhancing strategic areas such as the Eastern Economic Corridor (EEC). Despite forming less than 3% of registered companies, they generate one-third of national value-added, employ one in ten skilled workers and constitute a quarter of all business expenditures on R&D and training.

The Board of Investment (BOI), the Thai agency mandated to develop and implement the 7-year investment promotion strategy, is one of the oldest IPAs in the world. The agency is a key pillar of Thailand's institutional ecosystem and is often considered as a source of good practice for peers around the world that aim to enhance their performance in attracting foreign investment. Under the Investment Promotion Act, the initial duty of the BOI five decades ago continues to be the agency's core mandate today, which is to issue promotion certificates and amend the list of activities that are eligible for tax incentives and non-tax concessions such as eased restrictions on foreign shareholding and expatriate workers. This *de facto* regulatory mandate of the BOI is consistent with the "dual track" approach (see Chapter 6).

As one of the most effective state agencies, the BOI has inherited new responsibilities over the years, such as attracting foreign talent, including entrepreneurs, and facilitating their entry. Thailand's reliance on the BOI could end up weighing on BOI's capacity to perform its various mandates effectively, and more particularly core investment promotion functions. Attracting investors and talented foreign workers on one hand and ensuring that they comply with legal requirements on the other are two different functions with different objectives. Mixing the mandates could affect the efficacy of the agency but also its credibility as it is supposed to represent investors' interests in policymaking while regulating them at the same time.

The 2015-21 investment promotion strategy is designed to respond to the country's broader development goals and its implementation is pivotal to enable the targeted industries to become Thailand's growth engines of the future. The strategy aims at promoting both inward and outward investment to enhance Thailand's competitiveness, overcome the "middle-income trap" and achieve sustainable growth, in line with greater ambitions related to Thailand 4.0 (Chapter 2 and Chapter 11 on promoting outward investment). The strategy is structured around four pillars: productivity enhancement (including through SME upgrading and outward FDI), technology and innovation (e.g. R&D activities and high value-added services), human capital and foreign talent, and the development of specific territories (i.e. the EEC, border SEZs and disadvantaged regions).

The strategy introduced a few novelties with regard to the pre-2015 incentives scheme but did not bring fundamental changes. The BOI's proclaimed shift from broad-based to more targeted incentives was a positive development. Nearly 50 activities were no longer promoted when the strategy entered in force in 2015, although it is not clear whether the eligible list has been further reduced since then. For instance, the government amended the Investment Promotion Act in 2017 to introduce technology-based incentives, although they are less sector-specific, thereby reducing their distortive impact on the economy.

The wider tax incentive scheme continues to be complex and its generosity can weigh on the ability of non-promoted firms, particularly SMEs, to compete on equal basis with promoted businesses. Activity-based incentives such as exemptions of corporate income tax (CIT) and import duties still dominate the basic incentives scheme. The main innovation was the introduction of merit-based incentives that provide an add-on to the basic scheme with additional CIT exemptions and tax deductions if a project undertakes

R&D or skills development activities or locates in specific regions or in an industrial area (cost-based incentives). The merit-based scheme is a positive development as it is preferable to activity-based incentives, which can generate important forgone revenues, but the scheme could be simplified and have less stringent criteria to attract foreign investment with higher impact.

On investment facilitation, the government's policies further improved an already highly favourable business climate. Additional progress could be made in the area of intellectual property rights as they are crucial for attracting investments in R&D. With regard to Thailand's challenge of attracting foreign skilled workers, the government has sent signals to address this issue with the creation of the BOI's Strategic Talent Centre (STC) to facilitate the entry of talented workers and the introduction of the SMART visa programme in 2018 to provide facilitation incentives to talented foreign workers, entrepreneurs and start-ups. While prospects are promising, it is early to assess the outcomes of these initiatives and, notwithstanding their relevance, streamlining the wider legal and institutional framework for the entry of foreign workers continues to be necessary.

The COVID-19 pandemic triggered immediate policy responses to support existing investors and pave the way for a sustained recovery. The risk of reduced FDI flows makes it even more relevant for the BOI to accelerate the transition toward promoting activities with a high developmental impact, supporting the recovery. During the first quarter of 2020, the number of applications submitted to the BOI slightly increased compared to the same period last year but the total invested amount declined by 44%, as projects were smaller. To respond to the crisis, the BOI rapidly adapted its activities and adopted new measures. The IPA has taken measures on the investment facilitation front, followed by other measures to mitigate the impact of the crisis on investment, including tax incentives to accelerate investment in the medical sector.

It is premature to draw definite conclusions on the outcomes of the 2015-21 strategy and its wider effects on R&D and skills, particularly with the COVID-19 outbreak, but interim analysis raises a few observations. First, the incentive scheme did not radically change the distribution of investment by sector, at least until 2019. Second, foreign shareholding is not higher the more generous incentives are while this is to be expected as the most generous incentives are granted to activities with no or very few existing investments in Thailand. The same is observed for foreign workers. Third, incentives to spend on R&D and skills have had modest impact although this may improve with time. Last but not least, the socio-economic benefits of promoted firms continue to be unequally distributed. Operations are confined to Bangkok and the EEC and border SEZs may not be able to reverse this pattern.

Policy recommendations

Short- and medium-term policy priorities:

The following policy considerations to strengthen promotional efforts could be implemented without adjustments to BOI's broader mandate and legal obligations and would not require coordination with other government agencies involved in attracting investment into R&D and skills development, for example:

- Streamline the tax incentive framework and rethink the design of some schemes to limit forgone revenues and attract investment with higher development impacts:
    - In the short-term, and to pave the way for a post-COVID-19 recovery, maintain the level of granularity in the general list of activities eligible for investment promotion but continue lowering the number of promoted activities and progressively reduce the incentives of those in sectors with lower comparative advantage. The next strategy could focus, instead, on more horizontal activities that can continue building the foundations for a knowledge-based economy, such as promoting investment in advanced technology, R&D, skills development, and the medical sector.

- In the medium-term, improve the design of the merit-based scheme to attract investment with higher development impacts and eventually expand the scheme to all firms to level the playing-field with non-promoted companies, particularly SMEs. The application process could be further streamlined and the decision criteria eased. Furthermore, gradually move from exemption of CIT and import duties to a scheme with tax credits and deductions as the main type of tax incentives. In parallel, Thailand could explore reducing import duties.

- Conduct a thorough and informed cost-benefit analysis of the overall effectiveness of the 2015-21 tax incentives scheme. The results should be made publicly available. Disclosing information on overall forgone revenue through tax incentives would greatly support the government in its efforts to move away from a profit-based investment promotion to a merit-based strategy to attract and retain more sustainable investments.
- Sharpen the quality of the investment generation activities to better target top foreign multinational firms, particularly foreign R&D performers, and continue the efforts to facilitate investment entry and retention and improve the broader business climate for R&D performers. After-care services could focus on enhancing reinvestments, particularly in R&D activities.
- Further involve the private sector and other relevant stakeholders in the decision-making process of the BOI to ensure that the views and interests of all businesses are taken on board in BOI's broad strategic directions. The Board of the BOI could also include public and private representatives from the innovation and education policy communities and wider civil society as well as being more gender balanced.

Long-term policy priorities:

The following policy considerations require coordination and alignment across multiple government agencies and broader policy and institutional reforms, beyond the scope of the BOI mandate. They could be initiated in the short-term but are likely to involve a medium-term planning horizon.

- Ensure that investment promotion and facilitation responsibilities are balanced across government agencies, sufficiently funded, explicit, and mutually understood and clear for all. To safeguard the BOI's efficiency over the longer-term, consider the option of liberating it from some of its functions (e.g. separating policymaking and regulatory mandates and promotion and facilitation tasks) if, and only if, the same quality of services can be provided. The success of such an option is conditional on undertaking other reforms:
    - Re-evaluating and reforming the FBA may be an opportunity to adjust the Investment Promotion Act and eventually liberate the BOI from its mandate to provide non-tax incentives to foreign investors (Chapter 6).
    - Clarifying the wider institutional framework for attracting and facilitating foreign workers' entry and how best to perform the mandate of foreign talent attraction across government agencies. The know-how of the BOI as an effective agency could be replicated for such reform.
    - Continue streamlining the wider legal framework for the entry of foreign workers, with the ultimate, long-term objective to make BOI's SMART visa and related programmes obsolete as they are not part of the agency's core competencies. Available and transparent data on the stringency of migration policies could raise awareness and help concerned agencies advocate for policy change.
- Provide better statistics to support evidence-based investment promotion policy making. The BOI could develop a nomenclature for promoted activities that can be matched with product-level trade statistics. In addition, the agency, in co-operation with the National Statistical Office, could match the project-level data collected by the BOI with the establishment-level data of the Industrial Census of Thailand to assess more accurately the outcomes of the merit-based incentives on productivity, exports, R&D, skills development, and other outcomes.

The institutional framework for investment promotion and facilitation

Recognising the importance of private investment for economic and social development, most countries have established IPAs dedicated to promoting and facilitating investment, often with a particular emphasis on attracting multinational enterprises (MNEs) and capturing the benefits of FDI. Investment promotion agencies (IPAs) evolve in their own historical and institutional contexts: their establishment responds to specific policy objectives, and their governance is often dictated by their institutional contexts and broader political choices (OECD, 2018).

This section addresses how the BOI fits in the overall institutional framework for investment promotion and facilitation within the public administration and looks at: (1) BOI's establishment and recent reforms; (2) the scope and diversity of BOI's formal mandates; (3) the legal status, reporting lines (including the role of the governing board) and the co-ordination with the agencies in charge of R&D and skills development.

BOI's establishment and successive institutional reforms

Thailand has a long history of promoting and attracting FDI, which played a key role in making it one of the world's fastest growing economies for several decades. Investment policies are implemented by the Board of (Industrial) Investment, which was established in 1954 to stimulate foreign and domestic investment, all behind a high level of protection (Thomsen, 1999).[1] The Office serves as the secretariat to the Board (hereafter the BOI) and was established in 1966, earlier than in many OECD countries which established their agencies only from the 1970s and mostly in the 1990s (OECD, 2018).

Since its creation, the BOI has had the mandate to issue promotion certificates and to modify the list of promoted activities or sectors as per the Industrial Promotion Act B.E. 2505 (1960). The initial duty of the BOI, five decades ago, continues to be the agency's core mandate today, which is to grant investors fiscal incentives, including corporate income tax and import duty exemption, and non-tax concessions such as eased restrictions on foreign investment and employment of foreigners based on various criteria (firm size, geographical location, etc.).

The BOI's organisational structures and strategies, just like that of other IPA's worldwide, have nonetheless evolved over time, with increased globalisation and technological change. As countries gradually dismantled their trade and investment barriers, agencies had the task to disseminate information about the host country and its business climate. The BOI revised its investment promotion strategy to reflect the government' shift from import-substitution (1960-1980) to an export-based growth model (1980-1996) as described in Chapter 2.

Until 1977, date of the enactment of the Investment Promotion Act B.E. 2520, Thailand restricted FDI in export-oriented industries and the BOI could impose tariff surcharges to provide additional protection to promoted firms (Thomsen, 1999). The revision of the Investment Promotion Act radically changed the strategy of the BOI. The criteria for foreign-ownership majority shareholding became conditional on export performance and the agency started granting large tax and tariff exemptions to export-oriented businesses. Export requirements have been abolished since 2000 after accession to the WTO in 1995.

Thailand and other emerging countries increasingly recognised the role of the IPA in fulfilling national development objectives, notably by targeting job creating and higher value-added activities. In the late 1980s, the BOI undertook institutional reforms to decentralise investment promotion and promote regional development. The agency established in 1988 the first sub-national office and in 1992 the unit for industrial linkages development (BUILD). With increased liberalisation and technological progress, in the 2000s, the BOI and other IPAs around the world shifted their priorities to engage in investment promotion activities that are more sophisticated and offer services more tailored to the needs of investors.

The generosity of tax incentives provided by the BOI declined with the 2001 and 2017 revisions of the Investment Promotion Act. Conversely, the number of restricted activities under List Two of the FBA, with full foreign ownership permitted only if promoted by the BOI, did not decrease (see Chapter 6). Granting promotion certificates in eligible activities that also allow full foreign ownership continues to be one of the agency's main non-tax incentives.

Objectives and wider mandates of the BOI

IPAs have been created with the primary mandate to promote and attract inward foreign investment. There are substantial variations in the number and scope of mandates for IPAs in OECD and non-OECD countries, as revealed by a recent survey of IPAs that covers the OECD, the Middle East and North Africa (MENA), Latin America and Caribbean (LAC), and Southeast Asia (IDB-OECD survey of IPAs 2018). In Southeast Asia or in MENA, IPAs are often part of a larger agency that has many mandates in addition to core investment promotion functions (such as negotiating trade agreements, or managing privatisations or economic zones), and so tend to have a wider set of responsibilities than OECD and LAC agencies (OECD, 2018; 2019a; Volpe and Sztajerowska, 2019).

The core roles and responsibilities of the BOI are to promote both investment into Thailand and Thai investment abroad (Box 5.1). The Investment Promotion Act and fact-finding meetings indicate that the BOI has at least seven mandates according to the classification of the OECD mapping of IPAs: promoting foreign and domestic investment, promoting outward FDI (see Chapter 11), operating a one-stop-shop, delivering relevant business permits, and granting tax incentives, although incentives requests are processed by the Ministry of Finance (Table 5.1). Additionally, the BOI "studies and attends meetings on international business agreements or international investment cooperation" but the agency has only a supporting role in negotiating agreements, except the ASEAN Comprehensive Investment Agreement for which it is the main negotiator.

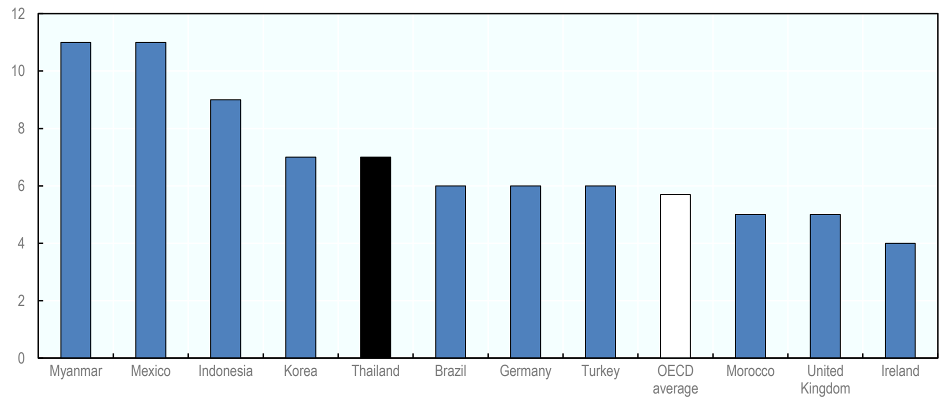
Box 5.1. The Investment Promotion Act: Powers and duties of the BOI

- Undertake works to publicise investment potentials and induce investments in those activities which are important and beneficial to economic and social development, and security of the country;
- Establish an Investment Services Centre to assist prospective investors and investors in obtaining permissions and services;
- Appraise projects requesting promotion, supervise, control, and evaluate promoted investment projects;
- Conduct studies and research in identifying investment opportunities, prepare feasibility reports, and formulate an investment promotion programme;
- Study and compile data relating to investment on the Kingdom;
- Perform other duties in the furtherance of the objectives of the Investment Promotion Act.

Source: Investment Promotion Act 1977

Despite a larger number of mandates than in OECD IPAs (Figure 5.1), the BOI can nonetheless be categorised as a specialised type of agency, focusing only on investment and investment-related mandates, as is the case for the Chilean, Czech or Irish agencies, for example. Other IPAs around the world have included other responsibilities such as innovation or export promotion. For instance, more than half of OECD agencies combine the investment and export mandates into one single agency. While countries like Japan, Korea and the United Kingdom merged their investment and export promotion functions into a single agency in the 1990s, a growing number of other agencies have followed a similar path in the past ten years. This includes Australia (2008), Germany (2009) Spain (2012), France (2015), and Poland (2016-17) (OECD, 2018).

Figure 5.1. The BOI has a higher number of mandates than OECD agencies



Source: Investment Promotion Act of Thailand; OECD (2018; 2019a; 2020d); Volpe and Sztajerowska (2019).

Another important difference between BOI's main functions and those of IPAs in OECD countries is on the facilitation front. The Thai agency has the mandate to operate the One-Start-One Stop Investment Centre (OSOS), which hosts representations from several government ministries and agencies. This is a key difference with OECD and LAC IPAs, only 13% and 12% of which operate one stop shops (OSSs) (OECD, 2018a; 2019a). The institutional framework of the BOI is closer to agencies in MENA and ASEAN, which often operate an OSS to facilitate business transactions and reduce the cost of doing business. BOI's OSOS provides a wide range of investment-related advice but does not deliver permits, unlike for some OSSs in other countries.

The responsibilities of the BOI have evolved recently and now include the facilitation of foreign talent admission to Thailand. For instance, the agency established a Strategic Talent Centre (STC) in 2017 to provide assistance to Thai and foreign firms, regardless of whether they are promoted or not, that are seeking to recruit highly skilled Thai and foreign specialists in the fields of science and technology to support their businesses in Thailand. The STC acts as the coordinator for facilitation of foreign talent entry, with support provided by other government agencies involved in science and technology, the immigration bureau and the ministry of labour.[2]

The function of facilitating the search for and the entry of foreign talent is rather an unusual mandate among IPAs, and even more so in the case of the BOI as the agency offers this service to both promoted and non-promoted companies. Providing such services to all firms without discrimination with regard to their promotion status is in itself an important and positive development. Nonetheless, it is an open question whether an IPA such as the BOI is best placed to provide such services, particularly in light of STC's growing role in the government's plan to transform Thailand into an innovation and technology-driven economy by providing recruitment services to seek out skilled Thai and foreign specialists.

Thailand combines investment regulation and promotion under the same roof

The BOI, in contrast to OECD agencies, combines regulatory and promotion and facilitation mandates, even if the line between these different functions is unclear in some cases. The BOI has regulatory powers on investment by reviewing every year the list of promoted activities, delivering applications for investment certificates or taking part in international investment agreement meetings. Other countries in Southeast Asia and in MENA (e.g. Egypt) have also established "super" IPAs, which are responsible for regulating and promoting investment (OECD, 2020a). Among OECD IPAs, it is a less common practice to combine regulation and promotion of investment under the same roof (OECD, 2018).

Mixing the two broad mandates of the BOI, i.e. regulation and promotion, is not without potential adverse consequences. Some studies show that those IPAs focusing exclusively on investment promotion achieve significantly higher results in attracting investors than those which carry out both regulatory/administrative and promotional activities (World Bank, 2011). Attracting private investors and ensuring that they comply with legal requirements can be two different functions with different objectives and requiring each specific skill sets.

The studies suggest that the confusion of roles within IPAs can create administrative slowness and blockages in terms of licence delivery, undermining agency effectiveness (World Bank, 2011). Businesses interacting with the IPA may wonder whether it is intended to solve their problems or to create new ones. The agency is often expected to represent private sector’s interests within government and it may be less credible to do so and to influence policymaking if it is the same agency that regulates them. In the majority of OECD countries, the ministry in charge of investment is responsible for investment policymaking and, if appropriate, other regulatory aspects such as reviewing investment proposals and monitoring companies’ projects (OECD, 2020). Meanwhile, the IPA is more autonomous from the ministry, searching for a balance between executing the government’s strategic goals and representing the views of investors.

Some facts possibly hint to the challenge for the BOI to operate these different mandates. For instance, the agency’s speed of services obtains the lowest satisfaction score from investors, according to one survey (Bolliger, 2015 and 2018). A long-term possibility could be to envisage dividing the BOI into two separate entities – one in charge of regulating investment, amending the list of promoted activities as well as reviewing applications for investment certificates and negotiating treaties, and the other responsible for investment promotion (i.e. image building and investment generation) and facilitation. If this option is envisaged, the promotion part could become more autonomous. The division of roles could increase efficiency, as the regulator could concentrate on strategic matters whereas the promoter can focus on performance and commercial outcomes (OECD, 2020).

The core investment functions of the BOI

In the vast majority of countries, including Thailand, IPAs are major players in the implementation of four core investment functions (Table 5.1). While the first two functions relate to investment promotion (i.e. marketing a country or a region as an investment destination and attracting new investors), the latter two deal with investment facilitation and retention. Investment promotion is meant to attract potential investors that have not yet selected an investment destination, whereas facilitation starts at the pre-establishment phase, when an investor shows interest in a location. Policy advocacy includes identifying bottlenecks in the investment climate and providing recommendations to government in order to address them. As such, investment promotion and attraction is primarily the business of IPAs while facilitation and policy advocacy are not limited to IPAs and involve a whole-of-government approach (OECD, 2018).

In most IPAs, including in OECD countries, investment promotion includes image building and investment generation (Table 5.1). In Thailand, the term “promotion” or “promoted” carries a more specific, narrower meaning than in other countries. “Promoted” refers to the certificates that companies eligible for investment promotion obtain along with tax and non-tax incentives. The responsibility of analysing investment project proposals and assessing their entitlement to a certificate is carried out by the Investment Promotion Division (IPD). Notwithstanding the title of the Division, it does not conduct image building or investment generation activities. The IPD is organised by sectors that are the targets of the investment promotion strategy, namely bio-based and medical industries (IPD1), advanced manufacturing industries (IPD2), basic and supporting industries (IPD3), high value services (IPD4), and creative and digital industries (IPD5).

Table 5.1. IPAs' most common core investment functions and related BOI department

	Image building	Investment generation	Investment facilitation & retention	Policy advocacy
Objective	Create awareness and generate positive feelings about a country as investment destination	Reach out to foreign investors and convince them to locate their investment in the home country	Facilitate the implementation of projects, maximise their economic benefits and generate follow-up investments	Monitor investors' perception of the investment climate and propose policy changes to improve it
Responsibility within the BOI	- Investment Service Centre (Thai Image Enhancement Plan)	- Foreign Investment Marketing Division - Investment Service Centre - Overseas offices	- Investment Promotion Division 1-5* - Investment Service Centre - One Start One Stop investment centre (OSOS) - Industrial Linkages Development Division (BUILD) - Investment Ecosystem Division - Visa and Work Permit Service Centre	- Investment Strategy and Policy Division - International Affairs Division - Legal Department

* Investment Promotion Division 1-5 facilitate investors in the process of project approval by providing recommendations and analysing eligibility before submitting projects to decision-making body for approval.
Source: OECD (2018) and the 2019 Guide to the BOI.

Box 5.2. IPAs' overseas offices: An effective but costly investment promotion tool

BOI's overseas offices are mandated with the promotion of foreign investors to invest in the targeted industries in accordance with the government policies. They also provide investment information, advice, suggestions and assistance to investors or potential investors who are interested in investing, as well as information about available joint venture partners. Overseas offices also conduct intelligence work by collecting information and monitoring the economic and investment situation in the responsible area and report to the BOI on a regular basis. They co-ordinate with the Foreign Investment Marketing Division.

The BOI has 16 bureaus overseas, mostly spread in Asia and the Pacific. Three out of four OECD IPAs have their own offices abroad, meaning that they have personnel abroad, dedicated to investment promotion, on their payroll. The average OECD IPA has 34 offices abroad, a little more than half of which conduct inward foreign investment promotion. There is an important dispersion across economies, however: the number of offices ranges from one (Israel) to 74 (Japan) while 40% of offices are defined as "regional hubs". The Korean, Irish, and Czech IPAs have respectively 36, 19 and 10 offices abroad. In the MENA and LAC regions, most IPAs do not operate overseas offices. In South East Asia, Indonesia's BKPM operates seven offices abroad.

IPAs' overseas offices can make a difference for the agencies' ability to attract FDI. Nonetheless, they can strongly weigh on agencies' finances. IPAs have different arrangements to operate their secondary offices overseas with reduced cost. As several OECD IPAs are part of broader agencies covering other mandates, their overseas offices perform different functions (e.g. trade, investment and tourism promotion). As such, OECD agencies with over 50 overseas offices abroad combine investment with other mandates. Some agencies hire local staff in foreign offices to lower costs. Other agencies do not have their own offices abroad, but place staff in the foreign diplomatic representations or cooperate closely with them. There is no consensus on how effective this last approach is; some IPAs with overseas offices report that in their experience staff at embassies are not equipped with the skills to best conduct investment promotion.

Source: OECD (2018; 2019a; 2020d) and Volpe, Martincus and Sztajerowska (2019).

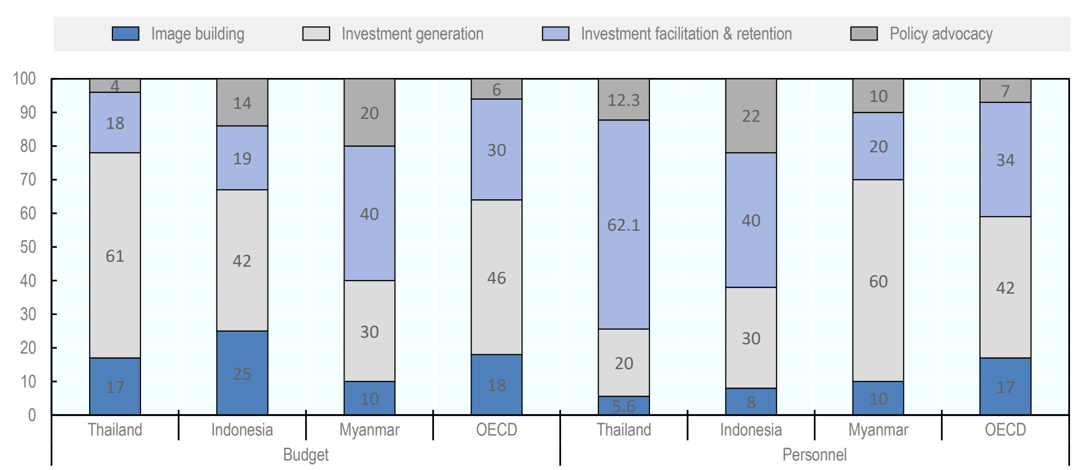
Some divisions of the BOI have wide functions that span both investment promotion and facilitation activities. For instance, the Investment Services Centre is responsible for creating a Thai Image Enhancement Plan (image building) and providing advice to prospective businesses for making investment decisions (investment generation) but also of providing services to investors and allowing the entry of foreign skilled workers (investment facilitation), in co-ordination with the Visa and Work Permit Service Centre.

Besides the IPD and the Investment Services Centre, other image building and investment generation activities are carried out by the Foreign Investment Marketing Division and overseas offices (Box 5.2) and other facilitation and retention functions are carried out by the One Start One Stop investment centre (OSOS) and the Industrial Linkages Development Division (BUILD), which was a unit until 2017. The Investment Strategy and Policy Division is responsible for improving the Thai business climate and has a policy advocacy function.

The allocation of budget and human resources across the four different functions reveals the BOI's main priorities relative to other agencies. Figure 5.2 shows the estimated use of the resources across the four functions, based on the IDB-OECD survey of IPAs that covered the OECD, MENA, LAC, and Southeast Asia. According to the estimates provided by the BOI, the agency allocates nearly 80% of the budget to investment promotion, mostly on investment generation and less on branding or improving the country's image. At the same time, most of the BOI's personnel is dedicated to the investment facilitation and retention function – and not to investment promotion.

Figure 5.2. Estimated use of resources across the investment functions of the BOI, selected ASEAN countries and the average OECD IPA

Share of the function in total budget and personnel of the agency



Source: BOI statistics; OECD (2018); OECD (2020c); OECD (2020d).

BOI's dichotomous allocation of budget and personnel reflects the fact that the investment promotion function is more costly because it consists of advertisement campaigns (image building) and operating overseas offices with highly-skilled Thai expatriate staff (investment generation). The relatively high allocation of staff to investment facilitation is expected in light of the important labour-intensive facilitation work carried out by most of the BOI's divisions and, at the forefront of them, the IPDs. While differences in the allocation of budget and personnel to the four investment functions also exists in Indonesia, Myanmar and the average OECD agency they are less important than in Thailand. The BOI has much larger gaps between the budget and personnel allocated to investment generation and investment facilitation compared to the other IPAs, especially the average OECD IPA.

Policy advocacy is one function where BOI's dedicated resources are broadly similar to OECD agencies but less like Indonesia and Myanmar who allocate relatively more resources to this function. IPAs in OECD countries, for example, are often more focused on the implementing aspects of investment promotion and facilitation than on their policy and regulatory features, whereas their counterparts in the Middle-East and Southeast Asia, such as BKPM in Indonesia, tend to have broader policy mandates (Box 5.3).

Box 5.3. The policy advocacy function of investment promotion agencies: Indonesia

Policy advocacy is conducted by a majority of IPAs around the world. IPAs involved in policy advocacy can decide to focus on specific activities over others, which are often grouped into three main categories: 1) performing actions to monitor the investment climate (e.g. tracking of rankings, meetings with the private sector, business surveys, consultation with embassies); 2) providing formal feedback to the government on how to improve the investment climate (e.g. meetings with government officials, production of position papers); and 3) providing informal feedback to the government on how to improve the investment climate (e.g. participation in periodic meetings, events, press articles).

An agency like BKPM in Indonesia performs a wider range of related activities than its peers from the OECD (OECD, 2020d). Policy advocacy is a natural function for a co-ordinating body involved in regulatory and facilitation activities like BKPM. The Indonesian agency noticeably dedicates a higher share of its resources (both staff and budget) to policy advocacy than its peers in other regions, which could be linked to its regulatory, co-ordinating and policy advisory functions. The agency's Deregulation Directorate, for example, is in charge of advising and consulting line ministries on policies and regulations that could affect FDI (e.g. business licences, restrictions to FDI, etc.).

Source: De Crombrugghe (2019) and OECD (2020d).

Governance policy of the BOI

The governance of an IPA relates to the way it is supervised, guided, controlled and managed. IPA governance policies are often dictated by their institutional contexts and broader political choices (OECD, 2018). It affects their legal status, reporting lines and managerial structure, including the role of their board if it exists. IPAs can usually be created as part of a ministry, an autonomous public agency, a joint public-private body, or a fully privately-owned organisation. The BOI belongs to the second category, as it is an autonomous government agency under the authority of the office of the prime minister. Autonomous public agencies are the most common form of IPA legal status in both OECD and non-OECD countries (OECD, 2018 and 2019a).

By reporting directly to the prime minster, the BOI plays an influential role in Thailand's policy landscape. This reporting line has nevertheless changed over time, as between 2003 and 2014, the BOI reported to the Ministry of Industry. IPAs can have different reporting lines, depending on their legal status and the broader institutional environment. In OECD and LAC countries, the majority of IPAs report to the ministry of economy and, in some cases, the ministry of foreign affairs. Only a few agencies report to the head of government (e.g. Turkey). The case of Thailand is similar to some MENA countries, where the prime minister or the president heads the board of the IPA (OECD, 2019a).

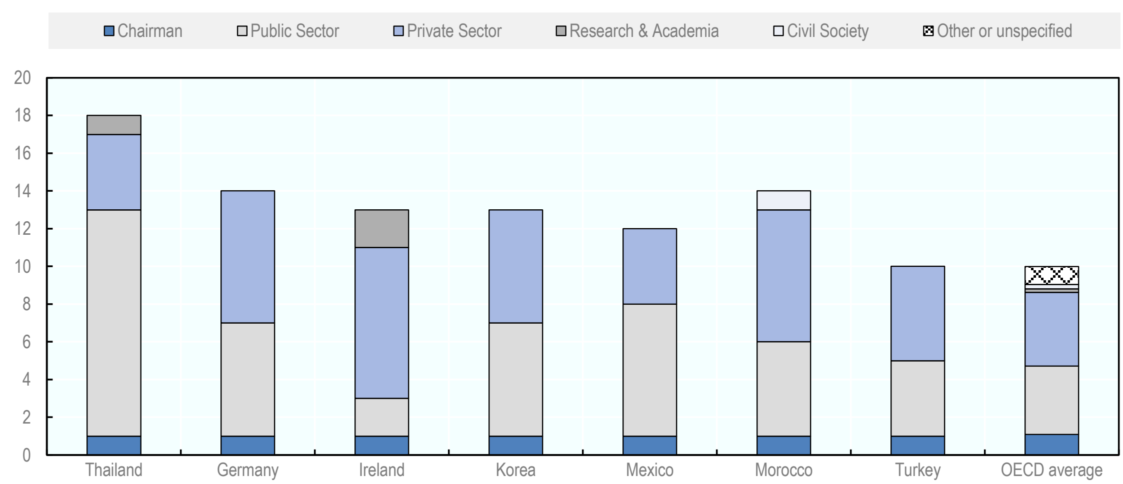
A key component of an IPA's governance policy is the existence and role of a board. The board supervises or advises the work of the agency, or both, with an independent perspective. Boards vary greatly from one

IPA to another; they can be of advisory nature or with a high degree of decision-making power. In Thailand, the board of the BOI also approves investment projects of more than THB 2 billion (USD 66250).

The board of the BOI can be composed of no more than 13 members and up to five advisors but only members can vote. As per the law, members should include the prime minister, who is the chairman, the minister of industry, the deputy chairman, and the secretary-general of the BOI, the secretary to the board. The remaining members are mostly government representatives, except the heads of the Thai Chamber of Commerce, Thai Bankers' Association and the Federation of Thai Industries. Three advisors also currently sit on the board of the BOI. The prime minister appoints all members and advisors.

Board members of OECD IPAs include over 40% of private sector representatives on average – the remaining being representatives of the public sector, research and academia, civil society or other areas. This share is lower in Thailand (Figure 5.3). Having a sound and diversified private sector representation on the board is essential to ensure that the views and interests of businesses are taken on board in BOI's broad strategic directions. More importantly, having a private sector representative on the board should not substitute for wide and systematic private sector consultation platforms and mechanisms. Beyond the private sector, the Board of the BOI could include public and private representatives from the innovation and education policy communities and wider civil society.

Figure 5.3. Board members in BOI and selected other IPAs



Source: Investment Promotion Act of Thailand, OECD (2018 and 2019a).

Similarly, in most other IPAs, public sector members of the board come from other ministries and government agencies, not only to provide complementary skillsets to the strategic decision-making but also to allow for smoother inter-institutional co-ordination. The BOI could consider diversifying its board to integrate more private sector representatives and more women. With the exception of the secretary-general, current members and advisors are all men. Having women on boards may improve performance, including in Thailand as shown in a study exploring this relationship for board of directors of top public firms listed on the Thai Stock Exchange (Chotiyaputta and Yoon, 2018).

The functions of the regional investment and economic centres

Globalisation and technological progress have deeply affected MNEs' rationale in choosing locations for their operations and transformed the way destinations compete over investment. With the international fragmentation of production and services, investors are increasingly attracted to what they get from a specific city or region and less to what a country offers them (Crescenzi, 2018). Locations within the same borders can strongly differ in their attractiveness due to varying productivity levels, skills attributes and other local ecosystem characteristics.

Thailand is no exception as territorial disparities are very important. To address this long-standing challenge, the BOI created in the 2000s seven regional investment and economic centres. Their duties are to promote investment within a particular region; to provide advice and guidance for investors; to administrate the rights and benefits, as well as monitor and supervise the operation of promoted projects; build investment networks and industrial linkages in Thailand and abroad; and cooperate with or support the performance of other relevant agencies or others as assigned.

There is no a one-size-fits-all approach to IPA networks of sub-national offices. As in Thailand, the Japanese, Irish and Czech respectively operate 43, 7, and 13 sub-national offices. Another approach is to decentralise investment promotion and facilitation by relying on local governments and institutions. Almost half of OECD IPAs have no other offices within the country. This is also the case of Indonesia, where the IPA co-ordinates with independent local agencies. A greater presence of the BOI at the sub-national level may be driven by the agency's mandate to run OSSs at the local level.

Co-ordination of the BOI with innovation and skills development agencies

BOI's promotion activities are complemented and, to some extent, co-ordinated with a large number of government institutions. Promotion activities are also undertaken by several actors at the national and sub-national levels, including the Industrial Estate Authorities, the EEC, and the Office of Small and Medium Enterprises Promotion (OSMEP), and the SEZ Authority, which is managed through the SEZ committee under the NESDC.

Promoting investment in the knowledge-based economy creates a strong co-ordination imperative because of the inter-linked mandates. The focus group meetings organised in the context of this Review showed that there is a significant level of co-ordination between the BOI and government ministries and agencies, including those responsible for science, technology and skills development.

The BOI regularly interacts with the Ministries of Industry and Education as well as state agencies such as the national innovation agency, which operates under the umbrella of the Ministry of Higher Education, Science, Research and Innovation and the Vocational Education Commission (OVEC). The BOI also participates to the focus groups organised by the NESDC for the national development strategy. In light of the importance of R&D and skills upgrading for Thailand' national development strategy and the investment promotion strategy, this co-ordination could be further reinforced. For instance, the National Science Technology Innovation Policy Committee could have a more inclusive board comprising a representative from the BOI.

Investment promotion and facilitation efforts

This section describes the main features of the 2015-2021 investment promotion strategy and provides a critical assessment of the plethora of tax and non-tax incentives granted by the BOI. It also sheds light on the outcomes of the strategy (i.e. number of projects attracted, in which sectors and for which incentive group) for the interim period between 2015 and 2019. The section also describes Thailand's recent business climate improvements and investment facilitation reforms, notably the creation of the One Start One Stop investment centre and the efforts to facilitate the entry of skilled foreign workers.

Overview of the 2015-2021 investment promotion strategy

The investment promotion strategy in 2015 responded to several challenges faced by the Thai economy. First, upgrading local capabilities is pressing as the economic structure relies heavily on exports and is therefore prone to exogenous shocks. Second, Thailand's competitiveness in science and technology, and more broadly in R&D, is lower than in regional peers like Singapore and Malaysia (Chapter 3). Third, the country faces strong socio-economic challenges related to income and spatial inequalities and severe shortages of skilled labour. Fourth, the generous investment incentives were not as justified after that Thailand reduced CIT from 30% to 20% in 2013, bringing the country on a par with other ASEAN economies, and lowered import tariffs as a result of several free trade agreements.

To address these challenges, the 2015-2021 investment promotion strategy aims to promote both inward and outward investment to enhance Thailand's competitiveness, overcome the middle-income trap and achieve sustainable growth, in accordance with the sufficient economy philosophy and in line with Thailand 4.0 and the 20-year strategy (Chapter 2). The strategy was structured around productivity enhancement (including through SME upgrading and outbound FDI), technology and innovation (e.g. R&D activities and high value-added services), human capital and foreign talent, and the development of specific territories (i.e. the EEC, border SEZs and disadvantaged regions).

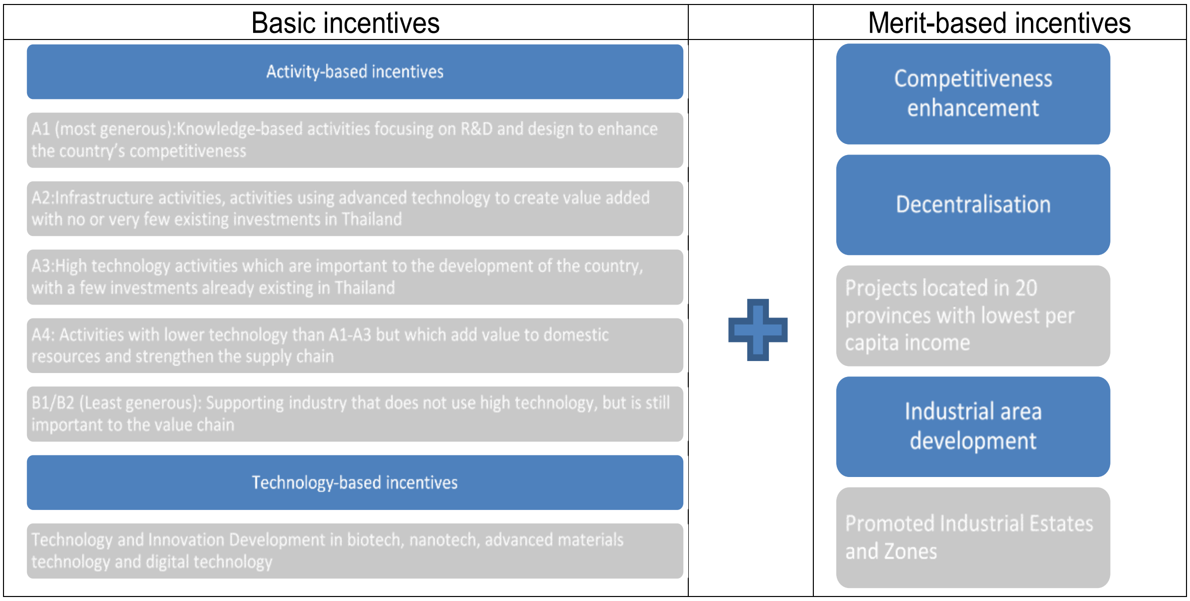
Investment incentives continue to be at the core of the strategy but the nature and targets of these incentives have changed over time.[3] When the BOI was created in the 1960s, investment incentives often co-existed with FDI restrictions. Foreign companies could invest only if they complied with national government objectives of import substitution and, later, export promotion. Thailand, as other ASEAN countries, eased to some extent investment and trade restrictions and tax incentives became one of the few remaining tools governments had to influence domestic and foreign investment (OECD, 2019b).

With gradual liberalisation, industrial policy in Thailand (and in ASEAN more broadly) shifted from protecting infant industries to supporting targeted industries and specific activities (e.g. R&D, skills development or SME linkages). Incentives also gradually became place-based, targeting less developed regions. The most recent strategy evolved to adapt to the new five S-curve sectors. The government amended the Investment Promotion Act B.E. 2520 (1977) in 2017 in order to attract high-valued investments in S-curve industries by granting tax holidays for knowledge-based projects using advanced technology and innovation.

The structure of the incentives scheme granted by the strategy included some innovations but did not bring radical changes to the investment regime. The scheme grants:

- **Non-tax incentives** to own land and bring in foreign skilled workers and, for foreign investors, to be exempted from foreign shareholding restrictions in List Two and Three of the FBA (see also Chapter 6).
- **Tax incentives, which consist of a basic scheme and a merit-based scheme**. The basic incentives include exemptions of CIT in the form of tax holidays (profit-based incentives) and, the novelty of this strategy, merit-based incentives that provide an add-on with additional CIT exemptions and holidays but also tax deductions (cost-based incentives) based on the merits of the projects (Figure 5.4). Projects can also be granted exemptions of import duties on machinery and raw materials used in R&D and in production for export.

Figure 5.4. Structure of the tax incentives scheme in Thailand since 2015



Source: OECD based on TDRI (2015) and the 2019 Guide to the BOI.

Some countries have adopted tax incentives conditional on locally generated value added. Thailand includes among the criteria to grant fiscal advantages to private investors a minimum threshold for the creation of domestic value added (20% or 10% of sales revenues depending on the sector). Furthermore, projects approved by the BOI (giving access to several tax and non-tax incentives) must obtain a certification, such as ISO 9000, ISO 14000, or similar international standard certification within two years from the start of full operation, otherwise the CIT exemption is reduced by one year.

The system of tax incentives in Thailand has grown in complexity over time in light of the plethora of concessions granted at different levels (i.e. sectors, activities, regions, SEZs, etc.) and by different government authorities (e.g. the BOI or the Revenue Department). Nonetheless, some efforts have been made to increase transparency and communicate more clearly on these incentives. The "Guide to the BOI", published every year in Thai, Chinese, English, and Japanese is one example. It describes well what are the sectors, activities, regions and special regimes that are eligible for general and special promotion schemes and the corresponding criteria and procedures to obtain the licences.

Incentives easing restrictions on foreign ownership are attractive but they deviate the BOI's attention to core investment promotion activities

Thailand's investment promotion policy largely shapes the universe of firms with foreign shareholding and orients their strategic decisions with respect to ownership and nationality. According to the industrial census of Thailand, 68% of the foreign-controlled companies (i.e. those with at least 51% foreign shareholding) held a promotion certificate in 2016 and in 2011. The remaining third are likely to operate either under the FBA, favourable provisions in treaties or international agreements or sector-specific regulations (Chapter 6).

Most of the foreign investors apply to the investment promotion scheme as it circumvents some of the foreign equity restrictions included in the FBA, provides additional protection to investors (Chapter 7) and offers a wide range of tax and non-tax incentives. With regard to incentives easing the restrictions on foreign shareholding, the BOI stipulates that:

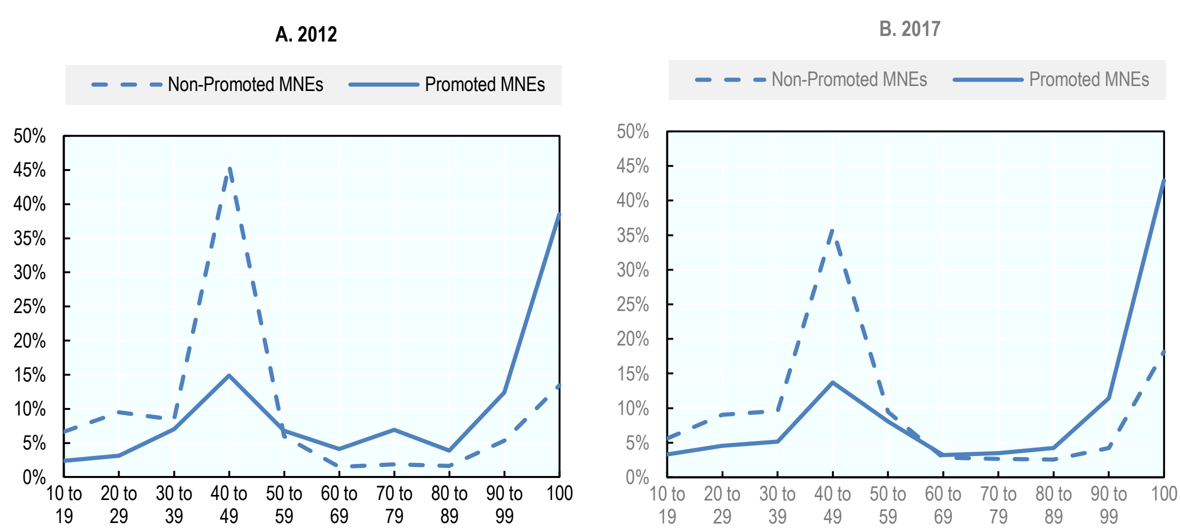
1. For projects in activities under List One annexed to the FBA, B.E. 2542, Thai nationals must hold shares totalling not less than 51% of the registered capital.
2. For projects in activities under List Two and List Three annexed to the FBA, B.E. 2542, there are no equity restrictions on foreigners except if specified in other laws.
3. The BOI may set foreign shareholding limits for certain activities eligible for investment promotion, as deemed appropriate.

Some projects eligible for investment promotion can thus enjoy majority (51% or more) or full foreign shareholding (100%), even when they are under List Two and List Three of the FBA (Chapter 6). One consequence of Thailand's dichotomous investment policy (i.e. promoted versus non-promoted) is that different levels of foreign shareholding prevail among the groups of promoted and non-promoted businesses.

The industrial census of Thailand confirms that firms' foreign ownership status, and the extent of foreign equity, intrinsically depend on whether the activity is eligible for investment promotion or not. It shows that three quarters of promoted manufacturers with foreign equity are majority or wholly foreign-controlled (respectively 30% and 40% of promoted firms with foreign equity) (Figure 5.5). Their behaviour contrasts with non-promoted businesses. The latter cluster at the 50% foreign shareholding, a threshold above of which they would be foreign, as per the FBA. This large concentration below the 51% threshold could signal a preference for foreign ownership that is obstructed by regulatory restrictions, although the FBA contains only few restrictions on the manufacturing sector. Chapter 6 provides more analysis with regard to this challenge.

Figure 5.5. The distribution of foreign equity among promoted and non-promoted firms

Share of firms according to their level of foreign equity (out of all firms with 10% foreign equity or more)



Note: Observations only include the industrial sector.
Source: OECD based on the Industrial Census of Thailand 2012 and 2017.

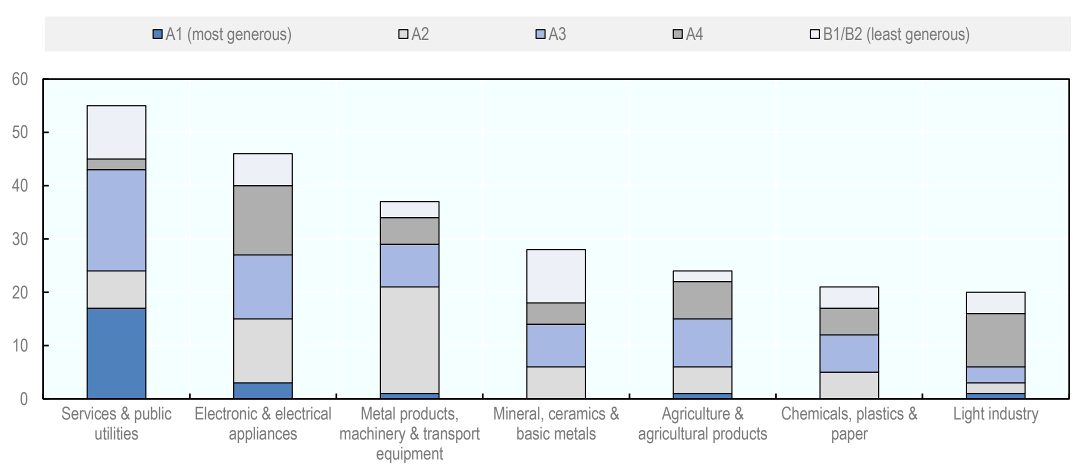
The figures above suggest that BOI's concessions on foreign shareholding are particularly attractive to investors seeking majority or full foreign control. This dualistic investment policy potentially comes with implicit costs from the perspective of investment promotion. It may distract the BOI from focussing on more relevant promotion and facilitation duties as the agency dedicates additional administrative resources to providing exemptions to foreigners. Furthermore, it limits the interaction with non-promoted foreign companies as these fall outside of the radar of the BOI while they could be interested in benefiting from the agency's after-care services, such as the BUILD programme. One positive signal is that differences in the distribution of foreign shareholding among promoted and non-promoted manufacturers narrowed between 2011 and 2016.

Tax incentives are targeted but tax holidays continue to dominate the scheme

The gradual shift in the BOI's strategy from broader sector-based to more targeted, activity-based incentives is a positive development. The 2015-2021 strategy aimed at moving from a broad-based to a focussed and prioritised promotion scheme, reducing the number of promoted activities (or sub-sectors) by eliminating 51 activities ("exit group") from the list, out of a total of 246 eligible activities (TDRI, 2015). Activities in the "exit group" were mostly in agriculture and agricultural products and in chemicals. The "Guide to the BOI 2019" lists 276 eligible activities, which suggests that the number of activities increased again in the last few years, partly prompted by the introduction of technology-based incentives in 2017.

Tax holidays continue to dominate the incentives scheme. Basic incentives are divided between activity-based and, since 2017, technology-based incentives. Promoted projects are entitled to the basic set of profit-based incentives (i.e. exemption of CIT) that varies depending on the activity of the business (activity-based) and the potential advanced technologies it supports (technology-based). The main difference between the different activities is the number of years of tax holidays. Activities under the A1 group are of special importance to building a knowledge-based economy. They benefit from eight years of CIT exemption without being subject to an exemption cap. B1 and B2 activities (least generous) are supporting industries that do not use high technology, but are still important to the value chain. They do not receive tax holidays. Eligible activities belong to seven sectors defined by the BOI (Figure 5.6). The services sector concentrates the largest number of promoted activities, and particularly of knowledge-based activities focusing on R&D (A1 group).

Figure 5.6. Number of promoted activities, by sector and incentives' generosity



Source: OECD based on TDRI (2015) and the BOI.

Technology-based incentives were introduced by the BOI to support targeted industries under Thailand 4.0. They grant CIT exemption for up to 10 years to projects with targeted core technology development such as biotechnology, nanotechnology, advanced materials technology and digital technology. These tax incentives are associated with activities that are more horizontal as they do not fall under one of the seven sectors, which plausibly reduce their distortive impacts on the economy.

Chapter 3 examined whether the investment promotion strategy is coherent with the stated objective of enhancing competitiveness. The goal was to identify whether the most generous incentives are granted in sub-sectors where Thailand is having (or expected to have) a revealed comparative advantage. The analysis showed that sub-sectors with generous incentives that had never witnessed a revealed comparative advantage are in their majority in the automotive and chemicals sectors. The comparative advantage of some light industries promoted by the BOI is on a declining path, such as the manufacture of watches and clocks, the manufacture of optical instruments, the manufacture of bicycles, and the preparation and spinning of textile.

The BOI should maintain the level of granularity in the list of activities eligible for investment promotion but could consider progressively phasing-out incentives, or lowering them, in sub-sectors with lower comparative advantage (also see assessment of Thailand's comparative advantage in Chapter 3). The post-2021 investment promotion strategy could further reduce the number of promoted activities by sector and focus, instead, on more horizontal activities that can lead the foundations for building a knowledge-based economy, such as activities using advanced technology, R&D and skills development. The next sections support these recommendations with further analysis.

Basic tax incentives did not radically change the distribution of projects by sector

The outcomes of the 2015-2021 investment promotion strategy started to be visible only a few years after its introduction, as businesses had already rushed to apply for investment promotion certificates in 2014. The applications surge in 2014, both in terms of volume and of value was triggered by the uncertainty around the revised scheme (Figure 5.7). Activities in the "exit groups", e.g. mostly in agriculture and agricultural products and in chemicals were partly behind the surge in the application in order to secure a certificate (TDRI, 2015). In 2015, the number of applications dropped dramatically while the BOI accelerated to approve accumulated applications. Since then applications have recovered their pre-2014 submission levels.

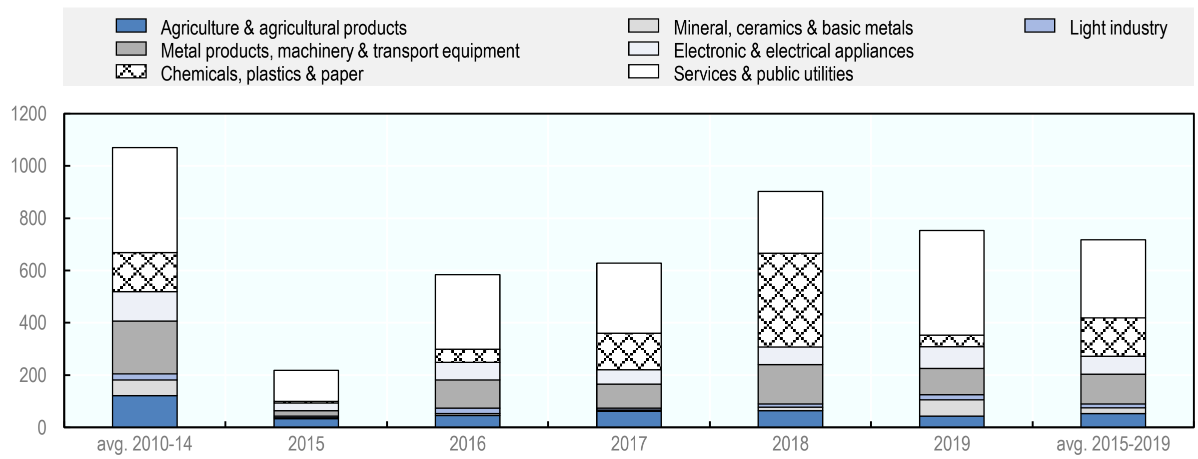
The change in 2015 in the general list of the activities eligible for investment promotion did not significantly affect the distribution of applications by economic activity (Figure 5.7). The chemicals sector continues to account for a significant amount of applications since 2015 (in terms of volume) despite counting the second largest number of activities in the "exit groups" (nine activities). Sectors with the most generous incentives and with no activities in the "exit groups", i.e. in electronics and electrical appliances, did not receive larger applications than before 2015, five years after the start of the 2015-2021 strategy.

The top 20 activities eligible for investment promotion, in terms of investment size, show that oil refining, which is included in the chemicals sector, received the largest submissions in terms of investment amounts between 2015 and 2019 (annex 5.A). In services and public utilities, infrastructure-related activities such as electricity production, transport of goods and logistics services accounted for most of the submitted investments. The value of promoted projects may not be the best indicator, however, since the nature of each business is different. For instance, the increase of investment value in the chemical sector in 2018 was due to one large investment project. Also, as the chemical sector is capital intensive by nature, it contributes more in terms of investment value, compared to labour or knowledge-based sectors, such as in services.

Figure 5.8 shows the number of applications submitted to the BOI between 2015 and end-2019 by incentive group, the corresponding amount of investment, foreign equity and employment. The A2 and A3 groups received the largest number of applications and the highest investment values. The A2 group is relatively more capital-intensive because it includes a number of infrastructure activities while the A3 group generates the largest number of jobs. The low number of applications and investment values in the A1 and technology-based groups is not necessarily alarming, as knowledge-based activities can require less capital and are less ubiquitous (the next section provides detailed analysis on the A1 group). The reduction of incentives for the B1 group in 2015 did not affect much the applications, however, since the group continues to receive large amounts of investment and many activities continue to rank in the top 20 (Annex 5.A).

Figure 5.7. Applications to the BOI before and after 2015, by sector

Applications submitted by promoted sector, in billions of baht



Source: OECD based on TDRI EIS and BOI Statistics.

Figure 5.8. Applications submitted to the BOI between 2015 and 2019, by incentive group

Note: Figures based on 276 activities eligible for investment promotion between January 2015 and December 2019. Some activities expired over this period or were withheld from the promotion list. A1: most generous activity-based incentive (Eight years of CIT exemption); B2: least generous activity-based incentive (No CIT exemption). Technology-based incentives were introduced in 2017 and grant projects 10 years of CIT exemption.

Source: OECD based on BOI Statistics and the 2019 Guide to the BOI.

Foreign resource intensity, either in terms of capital or labour, is not the same across the different incentives groups (Figure 5.8, Panel C and D). Some observations raise questions about the efficacy of the strategy. For instance, foreign shareholding intensity does not necessarily increase with the generosity of the incentive group while this could have been expected in light of the government's strategy to attract FDI in activities with no or very few existing investments in Thailand – the A1 and B1/B2 groups have the highest foreign capital intensities. The same line of argument holds for foreign workers intensity. Foreign workers are not necessarily more present in activities requiring higher skills but rather in the A3 (13%) and B2 (17%) groups. Beyond incentives, the structure of each industry also affects the number of submitted applications. For instance, hired workers across activities are not strictly comparable as those in more advanced industries have a higher set of skills.

Merit-based incentives are a positive development but their design could be refined

Merit-based incentives are the main innovation of the 2015-2021 investment promotion strategy. They are additional tax incentives (i.e. on top of basic incentives) which are granted to stimulate investment or spending on activities that benefit the country or industry at large (Figure 5.4). The BOI specifies additional incentives based on the merits of the project. Merit-based incentives include both profit-based incentives (tax holidays) and cost-based instruments (tax deductions) granted if the project contributes to R&D and skills development, decentralisation of investment or is located in an industrial estate.

Projects receive additional CIT incentives if they invest in in-house or joint R&D with overseas institutes, donate to technology or human capital development funds, pay IP acquisition/licensing fees, or provide advanced training. These incentives are cost-based instruments: businesses investing in technology and workforce development are eligible to include the investment value for CIT exemption for up to 200%, while projects investing in R&D are eligible to a maximum of 300%. To promote business linkages, projects are granted the additional incentives of 200% expenditure deduction from taxable income incurred for spending on the development of local, Thai majority-owned, suppliers in advanced technology through training and technical assistance.

Other merit-based incentives are granted with the objective of attracting investment in less developed regions of the country. Projects located in one of the 20 provinces with lowest per capita income receive additional CIT exemptions and reductions. They also receive deductions from the costs of transport, electricity and water supply for 10 years and additional 25% deduction of the investment cost of installation or construction of facilities. Projects in industrial estates or promoted industrial zones obtain an additional CIT exemption. Merit-based incentives related to "decentralisation" exclude border provinces in Southern Thailand and SEZs which have separate special incentive packages.

The reliance of merit-based incentives on cost-based tax instruments (and less on profit-based CIT incentives) is a positive development. International investment and tax policy communities broadly agree that tax holidays are the most distortive incentives (IMF-OECD-UN-World Bank, 2015; OECD, 2019b). They apply to profits or income that are already secured and may therefore directly involve forgone government revenues – making profitable investment projects even more profitable. Cost-based instruments like tax deductions and credits are preferable to profit-based tax holidays and reductions. The downside of cost-based tax incentives is that they require higher tax administration capacities (Andersen et al., 2017; James, 2014).

The design of merit-based incentives could be improved to increase their attractiveness and limit forgone revenues because of the scheme's high generosity. Data on the number of investors that applied for merit-based incentives are not available but consultations with stakeholders indicated that the application process could be further clarified and the decision criteria eased. Incentives on business linkages could be expanded to include the expenditures incurred by promoted firms in assisting and auditing their suppliers to adhere with the company's quality, environmental, health and safety standards (Galli, 2017). More broadly, merit-based incentives are not open to all firms and co-exist with other tax incentives granted by other government agencies. Expanding the scheme to all firms could level the playing-field with non-promoted companies, particularly SMEs. The multiplicity of tax incentive schemes can also make it complex for investors to identify the most appropriate scheme. The next sections on R&D and skills provide further analysis.

A cost-benefit analysis of the overall effectiveness of incentives would be beneficial

A thorough and informed cost-benefit analysis of the overall effectiveness of incentives would be beneficial and the results should be made publicly available. Disclosing information on overall forgone revenue through tax incentives would greatly support the government in its efforts to move away from incentives-based investment promotion to a competitiveness-based strategy to attract and retain investment.

The availability of data is a perquisite to conduct cost-benefit analysis of tax incentives and monitor more broadly the use and impact of activity-based and merit-based incentives. The BOI project-level database on submissions and approvals by activity could be complemented with a nomenclature that can be matched with product-level trade statistics at the 4 or 6 digits levels. In addition, the agency, in co-operation with the National Statistical Office and the Revenue Department, could match BOI's project-level data with establishment-level data of the industrial census. The census could be enriched with further information on the use of activity and merit-based incentives (and which ones) to assess their impact on productivity, exports, R&D, skills, and other outcomes.

Business climate and investment facilitation reforms

The 2015-2021 investment promotion strategy did not include major changes with respect to investment facilitation incentives. Nonetheless, the BOI undertook other important initiatives to improve the wider framework for investment facilitation and retention. These new initiatives include, but are not limited to, the introduction of the SMART visa programme to attract foreign talents and start-ups, probably the main innovation of the last few years, easing restrictions on the entry of unskilled workers and improvements in the administration of the OSOS and the services it provides.

The World Bank rates the Thai business climate as one the region's most favourable for investment

Thailand has registered notable improvements in the Doing Business ranking since 2016. Over the past 12-months, it surpassed 6 other countries and now ranks 21 out of 190 countries worldwide according to World Bank's Doing Business 2020. This progress was driven by improvements in the indicators dealing with construction permits, starting a business, getting electricity and resolving insolvency. The country attained its highest rankings for protecting minority investors (3rd place).

Thailand's business climate ranking is outstanding but less remarkable than a decade ago: in 2009, it ranked 12th in the Doing Business ranking. Further improvements can be made to cope with fiercer global competition and generalised improvements in neighbouring countries' business environments. In particular, some policy areas that are crucial for attracting higher value-added investments in R&D and advanced technologies could also be further improved. In comparison with Malaysia and Singapore, Thailand ranks lower in the Doing Business ranking with respect to facilitating trade, protecting and enforcing intellectual property (IP) rights, registering property, and dealing with construction permits.

IP rights are of special relevance for attracting and retaining knowledge-based FDI. A number of international indicators confirm that further improvements of the IP legal and institutional framework need to happen to further align Thailand with international standards. Effective intellectual property rights, and more particularly law enforcement, are still a challenge despite improvements. According to OECD team interviews with selected foreign investors in Thailand, there may be a need to address the perception of discretionary application of the current IP legal and regulatory framework. Chapter 7 provides concrete policy options on how to reform IP rights and their effective implementation.

Investment facilitation: the One Start One Stop Investment Centre

The BOI established the OSOS in 2009 to offer investors greater convenience in dealing with multiple agencies located throughout Bangkok. The OSOS brings together staff from 38 investment-related agencies at a permanent location in Bangkok's business district, together with the One Stop Service Centre for Visa and Work Permit, the Smart Visa Unit, and the STC. One strength of the OSOS is that services are provided to all prospective investors whether Thai or foreign, large or small and promoted or not.

The OSOS provides information and consultancy related to doing business in Thailand on topics such as obtaining investment promotion privileges, company registration, obtaining a foreign business licence, factory licence application and related procedures, customs clearance, and import and export. The centre also facilitates site visits to industrial zones. Contrary to some OSS in other countries, the OSOS is a services platform and has no mandate to deliver business permits, apart from on-site company registration service.

The OSOS could further support foreign investors by putting business registration documents in English at their disposal. For instance, one legal requirement of the MOC’s Department of Business Development (DBD), which is generally responsible for business registration, is that the documentation must be submitted in Thai language. Consultations with foreign investors indicate that this can cause delays in submitting applications as they typically have to hire a law or consulting firm to handle their applications in Thai language.

Recent efforts to attract and facilitate the entry of foreign workers

The mobility of human resources, particularly in science and technology, has become a central aspect of globalisation, alongside sustained growth in FDI, trade and R&D internationalisation (OECD, 2008). Already a decade ago, migration of talent was playing an important role in shaping skilled labour forces throughout the OECD area. In this growing context of a global race for talent, attracting foreign talent and facilitating workers’ entry and establishment has become one of the main objectives of Thailand. This objective is even more important in light of the generous incentives to attract skill-intensive investment. This scheme may not generate the expected outcome as long as it is a challenge for prospective foreign workers with required skills to obtain a visa or residence permit.

The government has sent strong signals with regard to its interest in attracting foreign talent. On the international policy front, since 2015, skilled labour within seven branches of professions can move freely in ASEAN under the ASEAN Economic Community agreement. At the national level, the recent creation of the BOI’s STC to facilitate the entry of talented workers and the introduction of the SMART visa should help in overcoming some of the labour shortage challenges. The agency introduced in 2018 the SMART Visa Programme to enhance Thailand’s attractiveness in drawing science and technology experts, senior executives, investors and start-ups. The SMART Visa is a new type of visa offered to foreign experts, executives, entrepreneurs and investors who wish to enter into Thailand to work or to invest in the country’s targeted industries. It offers significant benefits for the applicant, such as no necessity for a work permit, 90 days report replaced by one year report and no requirement for a re-entry permit.

When launched, the number of applicants to the SMART Visa programme was low according to consultations with the BOI, as its conditions were not easy to fulfil. To raise attractiveness and practical relevance of the programme, the BOI significantly relaxed the requirements nine months after it was launched. Concretely, it added three more sectors and lowered or abolished the minimum income and savings requirements for highly-skilled experts and start-up investors. Administrative steps were also further streamlined. While the prospects are promising, it is early to assess the outcomes of this programme. Information on the number of visas that are granted, and on the ease of doing so, would help monitoring the impact of the programme and adjust the process and criteria if needed.

Besides the SMART visa programme, the government has taken other steps to facilitate foreign talent entry to support the development of targeted industries. In co-ordination with other agencies, the BOI established the STC in 2017 to facilitate the search for and entry of foreign specialists in the science and technology sector both for promoted and non-promoted firms. The centre provides a mechanism which recognises the qualifications of foreign experts interested to work in Thailand. Once their qualifications are recognised, these experts will then be assisted regarding their visas and work permits. The process for non-promoted companies to request letters of support for foreign specialists' visa applications, and submit applications to bring foreign specialists to Thailand is managed by the BOI's Foreign Expert Services Unit, enabling online applications and notifications.

Notwithstanding the relevance of recent initiatives to attract foreign talent, streamlining the wider legal and institutional framework for the entry of skilled foreign workers continues to be necessary. Immigration policy could be streamlined and the benefits and costs of stringent regulations such as TM30 (landlords must register non-Thai nationals living in their properties) and 90 days report must be assessed against the wider objective of attracting foreign talent. If there are any identified benefits, other tools must be considered to remedy any specific situation. Such reforms could be envisaged by the Guillotine Unit (Simple and Smart License project). In the medium to long term, structural reforms easing foreign talent entry would make obsolete initiatives such as the STC or the SMART Visa programme, which affect the capacity of the BOI to focus on its core investment promotion and facilitation mission.

Admission conditions for the highly qualified have been eased in most OECD countries over the past decades but policies and practices for admission of talented workers continue to make a difference for determining workers' optimal location choice (Box 5.4). These could include family reunification practices or the ease of status change from temporary to permanent. OECD work has shown that for a majority of countries, adopting more favourable policy packages would enable them jump to the top of the list and become a leading destination notably for talented foreign workers. Aside from easing legal barriers on foreign workers' admissions, OECD countries promote talent mobility by improving the wider framework for talent attractiveness, which includes several dimensions such as the quality of opportunities, income and tax policies, and future prospects.

The entry and admissions of foreign unskilled workers is another challenge that promoted investors can face. The government is aware of Thailand's constraint with respect to unskilled labour. The BOI has been trying to facilitate the entry of foreign workers by allowing them to work in labour-intensive activities. Since 2016 the employment of unskilled workers in promoted projects is possible, conditional on the existence of an agreement with the home country of foreign workers, or the location of foreign unskilled workers in certain areas (i.e. SEZs in the southern border provinces). In December 2018, the BOI revoked the 2016 announcement to allow all promoted projects to employ foreign unskilled labour. Employment of unskilled foreign workers in promoted projects must conform to related laws and regulations of relevant government agencies.[4]

Immigration law in Thailand is complex and involves several government agencies i.e. the BOI, the Ministry of Foreign Affairs, the Ministry of Labour, the Immigration Bureau, and the Ministry of Interior. This structure, including the roles of each agency or ministry, could be clarified as it contributes to Thailand's investment facilitation challenges. Available and transparent data on the stringency of Thai migration policies could raise awareness and help concerned agencies advocate for policy change. One relevant indicator is processing time, measured in calendar days from when a prospective migrant initiates an immigration case to the date on which the individual is allowed to start working in the destination country. For OECD countries, this ranges from 39 days to 185 days (OECD, 2019c).

Box 5.4. The global race for talent: The OECD indicators of talent attractiveness

The OECD indicators of talent attractiveness are the first comprehensive tool to capture the strengths and weaknesses of OECD countries regarding their capacity to attract and retain three specific categories of talented migrants: highly educated workers (those with master and doctoral degrees), foreign entrepreneurs and university students. The indicators show policy makers how much leeway OECD countries have to make their country the chosen destination for potential talented foreign workers.

The indicators score seven dimensions: quality of opportunities; income and tax; future prospects; family environment; skills environment; inclusiveness; and quality of life. They also take into account how difficult it is for prospective foreign workers with required skills to obtain a visa or residence permit. Admission conditions for the highly qualified have been eased in most OECD countries over the past decades. Yet some countries are more attractive than others, due to a variety of factors, which may be related to overall economic, labour market and living conditions or to specific practices regarding the conditions for entry and stay of foreign talents. The most attractive OECD countries for highly qualified foreign workers are Australia, Sweden, Switzerland, New Zealand and Canada, which offer favourable labour market conditions and an excellent skills environment for highly skilled workers in general. More challenging admission conditions negatively affect the attractiveness of several OECD countries, including Israel, Japan and Turkey.

Source*:* OECD (2019c), How do OECD countries compare in their attractiveness for talented migrants?, Migration Policy Debates, N.19, May 2019.

Investment promotion and facilitation in the time of COVID-19

The COVID-19 outbreak, and the risk of reduced FDI flows as a consequence, makes it even more relevant for the BOI to accelerate the earlier trend of narrowing investment promotion to activities with a high developmental impact, and likely to support a sustainable recovery. During the first quarter of 2020, the number of applications submitted to the BOI slightly increased compared to the same period last year but the total invested amount declined by 44%, as projects were smaller. To respond to the crisis, the BOI and other IPAs around the world are rapidly shifting their activities and adopting new strategies (Box 5.5).

The BOI has taken rapid measures on the investment facilitation front, followed by other measures to mitigate the impact of the COVID-19 outbreak on investment, including steps to encourage investment in the medical sector. On investment facilitation, the agency launched an online document submission service (e-submission) on top of the existing e-services (e.g. e-investment for applications). This new service, in line with the government policies to encourage people to work from home, ensures that companies can still receive services from the BOI as in normal times. Furthermore, the agency made advisory services possible through online meetings and extended the application deadline for CIT exemption.

The BOI granted new tax incentives in the medical sector, with the objective of addressing the increased demand for medical equipment and supplies but also of developing the sector in the longer-term. Moreover, support has been given to the modification or transformation of existing production lines to increase the domestic availability of medical supplies. It also approved incentives to promote management of water resources, technology-based “smart farming” solutions and R&D in a broader range of activities than before the crisis.

Box 5.5. OECD IPAs' strategic responses to the COVID-19 outbreak

IPAs' capacity to adapt to new situations makes them key actors in governments' responses to the COVID-19 crisis. OECD IPAs' strategic responses to the COVID-19 outbreak included:

- *Re-organisation and innovation*. OECD IPAs have seen an immediate impact of the crisis on the way of doing business. Most of them re-organised rapidly to dedicate a COVID-19 section on their website with information on government support and applicable restrictions. Close to two-thirds of the agencies have a dedicated webpage in English.
- *Focus on existing clients and information provision*. The nature of services provided by IPAs has changed radically by shifting away from marketing to intense aftercare. As new regulations are adopted to mitigate the impact of the crisis, IPAs provide support to investors to navigate the rapidly evolving legal framework. They also play a key facilitating role to support firms with their ongoing operations and supply chain relationships.
- *Activating business networks*. IPAs have activated their business networks, particularly in the health sector and hardest hit activities, to help the government fight the crisis. For instance, Germany Trade and Invest narrowed down its services to only five industries, which are both the most hit by the crisis and for which the IPA can maximise its impact.
- *Going digital*. Digital means will allow IPAs to continue servicing and identifying future clients, which requires access to different digital tools. For example, digital client prospecting, capable of correctly identifying potential leads, and virtual-reality solutions for site visits can gain in importance. Some IPAs are already going digital. CINDE Costa Rica has accelerated its digital plans, including artificial intelligence-based marketing, providing services and products online. Business Sweden provides investors with access to online interactive maps of different industrial clusters, and plans to expand them.
- *New focus and prioritisation*. The COVID-19 crisis may propel agencies to reconsider their prioritisation strategies. For example, Business Sweden has used for years a qualitative evaluation system to identify high-quality projects and the UK Department for International Trade will continue using economic analysis and intelligence driven prioritisation to ensure that FDI plays an effective role in economic recovery.
- *Rethinking strategies and reforms*. In light of their evolving roles, OECD IPAs are rethinking their strategic orientations to better respond to both public and private sector needs. Investment climate reforms, supported by IPA policy advocacy, will become ever more important in a context of uncertainty and possible protectionist tendencies.

Source*:* OECD (2020b)

The landscape of promoted firms and their role in the knowledge-based economy

Investment promotion policies successfully enabled Thailand to attract new businesses that shaped the Thai economic landscape and contributed to the emergence of industries such as the automotive sector. Since the early 2010s, the effectiveness of these policies in modernising the economy, supporting technological progress, closing the skills gap and reducing inequality increasingly became an open question. A better grasp of Thailand's investment promotion policy impacts on building a knowledge-based economy is crucial in a context where policymakers relentlessly adjust strategies and tools to a world with fast-changing technological pace, increased global competition and tighter fiscal constraints.

Promoted companies are typically middle-sized or large export-oriented businesses, often with foreign shareholding, and in their majority located in one of the 57 industrial zones or in the economically advanced area forming the Eastern Economic Corridor (EEC). Their weight in the Thai economy is colossal, despite forming a small group of registered establishments in the industrial census of 2012 and 2016. They generate one-third of national value-added creation, employ one in ten skilled worker and spend a quarter of all business expenditures on R&D and training (Table 5.2). Their net positive impact in all aspects is, however, not a given. For instance, the socio-economic benefits of promoted firms could be geographically more widespread as operations are largely confined to BMA and EEC (also see Chapter 3 and 4).

Table 5.2 The weight of promoted industrial establishments in the Thai economy

Promoted firms in % of all establishments (unless otherwise specified)

	2011	2016
Promotion certificate status	2.5%	2.4%
Promoted foreign-owned (% of all foreign-owned firms)*	68%	68%
Promoted exporter (% of all exporters)	32%	35.5%
Value-added	34.4%	29.7%
Employment, among which:	20.3%	20.9%
Skilled	*10.4%*	*10.9%*
Unskilled	*7.5%*	*7.4%*
Other	*2.4%*	*2.5%*
Spending on R&D	52%	23%
Spending on training of employees	32%	20%

Note: * foreign-owned: 51% or more foreign shareholding.
Source: OECD based on the Industrial Census of Thailand 2012 and 2017.

This section examines further what are the characteristics of promoted firms and explores their impact on building a knowledge-based economy. The section pays particular attention to the four pillars of the 2015-2021 investment promotion strategy, namely productivity enhancement (including SMEs upgrading), technology and innovation, people (human capital and foreign talents), and the development of specific territories (i.e. EEC, border SEZs and disadvantaged regions).

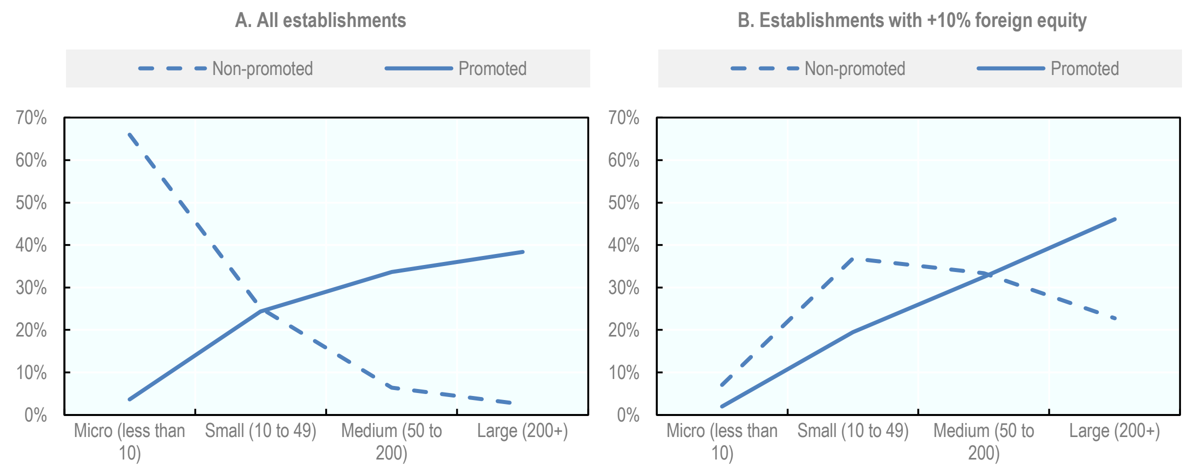
The majority of promoted businesses are medium and large establishments

One of the objectives of the 2015-21 investment promotion strategy is to encourage value-added creation by SMEs.[5] Investment promotion policy in Thailand is hence not fully size-neutral, i.e. some regulations or incentives are contingent on firms' size. Analysis based on the 2016 industrial census of Thailand reveals that six out of ten firms holding a promotion certificate are SMEs. The distribution is skewed towards medium-sized companies – one third of the certificates are held by firms with 50 to 200 employees (Figure 5.9). This ratio is even larger among the group of foreign enterprises with a promotion certificate. The group of large firms (More than 200 employees) represents a non-negligible portion of all promoted firms while it covers less than 1% of establishments in Thailand.

Micro and large businesses, i.e. firms at both ends of the size distribution, hold fewer promotion certifications. Size-contingent investment promotion policies may be at work, either by proactively targeting the group of larger SMEs or by minimising requests from other types of establishments. For instance, the minimum capital requirement to submit a project to the BOI is THB 1 million (USD 33100) excluding the cost of land and working capital. Exceptions exist for activities like electronics design and software development, for which the requirement is the minimum expenses for design personnel or IT personnel of at least THB 1.5 million per year.

Figure 5.9. The size of promoted and non-promoted industrial establishments in 2016

The distribution of establishments by their number of employees, in percent of all establishments



Source: OECD based on the Industrial Census of Thailand 2017.

Size-contingent requirements may obstruct potential requests by start-ups, although this could change with the introduction of the SMART visa programme for entrepreneurs and start-ups. The census is unable to assess whether current policies affect the number of applications or approvals (or both). It is possible that medium-sized firms are more prone to apply for promotion than, for instance, start-ups.

The BOI attracts productive firms but targeting could be further improved

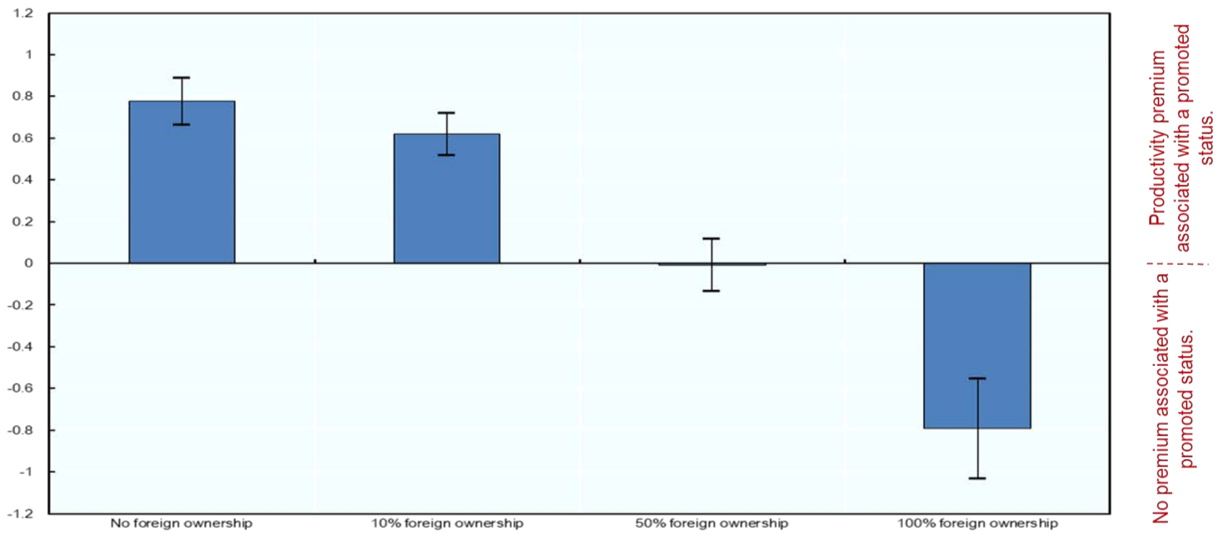
Investment promotion policies in Thailand, and the corresponding incentives they grant, aim at attracting top multinational and domestic firms that are at the productivity and innovation frontiers. The success of these policies in attracting such firms (e.g. basic incentives), but also in enhancing their performance and impact on the Thai economy (e.g. merit-based incentives), appear to be positive, although some adjustments could improve their efficacy, particularly with respect to the productivity of promoted foreign companies.

Manufacturing firms holding promotion certificates are about 60% more productive than their non-promoted peers, including within the same sector of operation and irrespective of their size.6 Investment promotion certificates are not necessarily associated with such performance premia for all types of firms, however. Analysis in Chapter 4 shows that firms with 10% or more foreign ownership perform better than their domestic peers. Since half of the promoted businesses have at least 10% foreign equity, the distinct effects of a promotion certificate and of foreign ownership on productivity cannot be entirely isolated from each other. This distinction is even more crucial as Thailand's investment promotion strategy focuses on FDI attraction.

Investment promotion certificates' positive association with labour productivity vanishes the larger is the share of foreign shareholding (Figure 5.10). In particular, attracted Thai-owned firms with a promotion certificate are significantly more productive than their non-promoted peers. This is not the case for partially or fully foreign-held promoted businesses (at least 50% of foreign equity), however, as they do not perform any better than the non-promoted foreign companies.[7]

Figure 5.10. Effect of investment promotion on labour productivity in Thailand

Marginal effect of a promotion certificate on labour productivity - conditional on foreign equity levels



Note: Result based on firm-level regression with sector fixed-effects and 95% confidence intervals. Dependent variable: labour productivity (value-added by number of employees in logarithms). Independent variables: share of foreign equity, promotion certificate, interaction between the two variables, and firm size. Promotion certificate is a dummy variable that takes value 1 if the company has a certificate and 0 otherwise.
Source: OECD based on the Industrial Census of Thailand 2017.

For the group of promoted foreign companies, which is plausibly composed of already large and productive MNEs that are typically active in highly concentrated markets, existing promotion strategies and incentives may not be as successful in attracting top global performers nor in further improving the performance of the ones operating. This is not necessarily problematic if these promoted MNEs operate in sectors of strategic relevance for the Thai economy. Nonetheless, the BOI could better target promoted activities attracting majority or fully foreign-owned firms, as also discussed in Chapter 6.

Another stated objective of Thai investment promotion policies is to foster business linkages between promoted firms and local suppliers to modernise the economy and upgrade SME performance. The BUILD programme on linkage development could concentrate its efforts on the support of SMEs in sectors where productivity gaps between promoted and non-promoted firms are the strongest – and beyond the automotive industry. Chapter 4 shows there is a productivity premium in favour of Thai firms that forge business linkages with foreign firms relative to those that do not. It is plausible that a similar premium exists when Thai firms forge linkages with promoted firms. Nonetheless, if the productivity gap between promoted firms and local suppliers is too large then technology spillovers may not occur, reducing the potential for wider productivity gains.

According to the 2017 industrial census, the size of the productivity premium associated with a promotion certificate depends significantly on firms' sector of operation. The largest gaps are observed in medium-tech industries such as recycling, chemicals, food, machinery and equipment and the smallest in low-tech manufacturing such as plastic products and in the apparel industry. BUILD could tailor the services it provides to the specificities of each sector and the performance gaps the sector reports between promoted and non-promoted companies, with the broader objective to narrow the gap across the two groups of firms.

Policies to attract knowledge-based and R&D activities have had modest impact

Thailand grants a plethora of incentives to boost investment in the knowledge economy, and more specifically in R&D. These incentives include both profit-based and cost-based instruments. As described in the previous section, the BOI basic incentives scheme include CIT holidays for technology-based projects and knowledge-based activities focussing on R&D (profit-based). The BOI's merit-based scheme, which is cost-based, grants promoted companies additional CIT exemption if they spend on R&D activities (Table 5.3).

Table 5.3 Description of cost-based R&D tax incentive schemes in Thailand

R&D scheme	General description of the scheme	Scheme offered in Thailand*
Tax credit/ tax credit account (R&D expenditure)	A tax credit decreases the corporate income tax amount a firm has to pay. A tax credit account provides each qualifying investor a specific amount of tax relief in the form of a cap (credit account). A tax credit account may be regarded as a sort of hybrid between a tax holiday and a tax credit (Zolt, 2015). Example: an investor receives USD 500 000 of corporate income tax liability in the form of a tax credit account. If the investor determines it has USD 60 000 of tax liability in year one, it would pay no tax, but the cap (credit account) would be reduced to USD 440 000 for future tax years. Credit can be applied to either corporate tax, payroll tax paid for R&D workers or personal income in case the incentive is targeted to self-employed.	**The BOI's merit-based incentive scheme** grants promoted companies 300 % additional cap (credit account) of corporate income tax exemption for one unit of investment or expense on R&D and 200% on IP acquisition/licensing fees for commercialising technology developed in Thailand.** Example: a project (without R&D) has THB100 million for the cap of corporate income tax exemption, corresponding to 100% of the investment made – excluding cost of land and working capital. If the project invests THB1 million in R&D, it will be granted additional cap for THB3 million. Thus, the project will have a total of THB103 million of cap (credit account) on corporate income tax exemption. If the investor determines it has THB2 million of tax liability in year one, it would pay no tax but the cap (credit account) would be reduced to THB101 million for future tax years.
Enhanced allowances (R&D expenditure)	An enhanced allowance effectively decreases the base amount that is taxed by allowing to 'inflate' the R&D expenditure base.	**The Revenue Department and the NSTDA** grant 200% tax deduction for R&D expenses. The maximum tax reduction allowed depend on the firm's income. Lower income gives right to higher levels of maximum tax reduction.
Accelerated depreciation (R&D expenditure)	Accelerated depreciation scheme permits to depreciate the purchased fixed assets at higher rates in the first years of the asset's life. This allows, therefore, to decrease the overall taxable income in the specific periods.	**The Revenue department** grants R&D equipment depreciation rate incentive. The depreciation rate will be set at 40% of the asset cost for the first year (against 20% for 5 years in general).

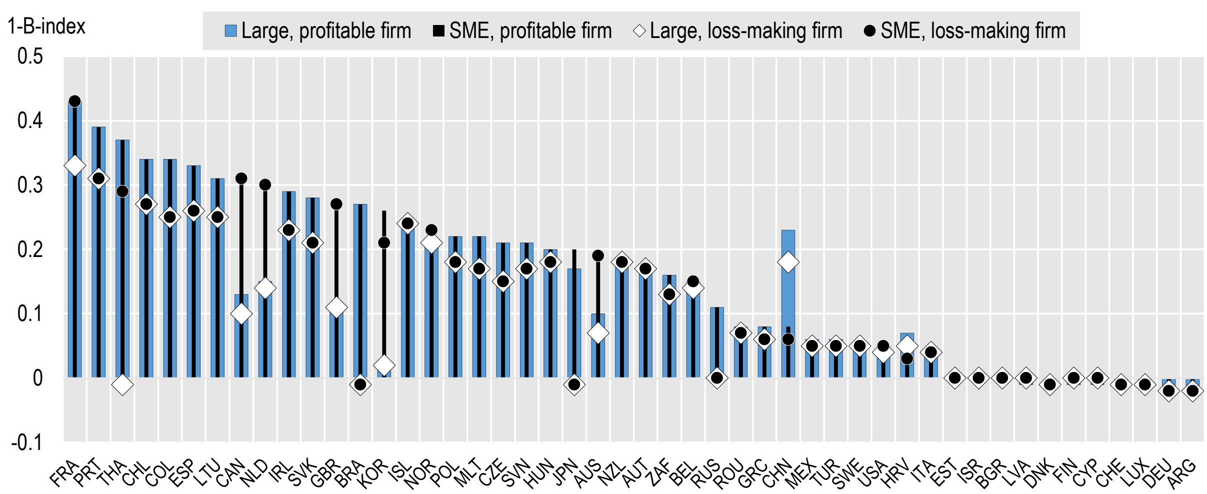
Note: * A promoted company cannot cumulate a merit-based incentive on R&D with an R&D incentives from the Revenue Department and the NSTDA. ** Promoted firms can also benefit from additional CIT holiday of up to three years conditional on R&D expenditures.
Source: OECD based on LHDNM-OECD: Effective and efficient use of tax incentives| 4-8 December 2017, Kuala Lumpur; The 2019 Guide to the BOI; and Zolt (2015).

In addition to the BOI scheme, the Revenue Department and the National Science and Technology Development Agency (NSTDA) grant a 200% tax deduction for R&D expenses.[8] The rate was raised from 100% to compensate for the reduction in the CIT rate from 30% to 20% in 2015. The multiplicity of R&D tax incentive schemes can make it complex for investors to identify the most appropriate scheme. Promoted companies can choose between BOI's merit-based R&D tax incentives or the scheme of the Revenue Department and the NSTDA but they cannot cumulate both. Non-promoted businesses have only access to the latter scheme.

The R&D tax incentives of the Revenue Department and the NSTDA reduce the cost of R&D through enhanced tax deductions. Tax credits or enhanced tax allowances (i.e. tax deductions) represent the most frequent form of R&D tax incentive support in OECD member countries and partner economies (Box 4.6). The merit-based incentive scheme operated by the BOI is more complex and is closer in nature to a tax credit account (Table 5.4). Overall, Thailand's tax subsidy rate on R&D expenditure, capturing the effect of the R&D tax allowance and accelerated depreciation provision, is generous in comparison with both OECD and non-OECD countries (Figure 5.11), especially for profitable firms. The tax subsidy rate provides a synthetic representation of the generosity of the tax system in a country for a marginal unit of R&D expenditure (Appelt et al., 2019).

Figure 5.11. Tax subsidy rates on R&D expenditures in Thailand and other countries

1-B-Index, by firm size and profit scenario



Note: For general and country-specific notes on the time-series estimates of implied marginal tax subsidy rates on R&D expenditures (based on the B-index), see http://www.oecd.org/sti/rd-tax-stats-bindex-ts-notes.pdf.
Source: OECD R&D Tax Incentive Database, http://oe.cd/rdtax, June 2020.

Despite their generosity, tax incentives to boost the knowledge economy have not yet had their expected impacts, although this could be related to a lack of carry-over or more advantageous refund provisions, or the overall administration burden in applying for tax support. Annex 5.B shows the applications for basic incentives to technology-based and knowledge-based activities focussing on R&D received by the BOI between 2015 and 2019. These activities represented 4% of all submitted applications in terms of investment value and 5% in terms of project number. The ratios are modest in light of the current policy focus on attracting knowledge-based investment. It is possible that applications in less ubiquitous and riskier activities such as R&D would not have taken place at all, or at a lower level, without the generous incentives in place.[9] In that case, incentives are effective and can be justified, aside from their wider justification with respect to R&D's spillover benefits for the Thai economy.

High quality foreign resources, either capital or human, have been instrumental in supporting advanced countries' transition towards a knowledge-based economy, and Thailand will be no exception. The investment promotion strategy acknowledges this fact by providing investment facilitation incentives to foreign investors or skilled workers. As described in the previous section, the outcomes of this strategy have been mixed. Foreign shareholding in knowledge-based activities (51% of registered capital) is slightly lower than in the average eligible activity (53%) as is also the case for foreign talent (4.6% workers versus an average of 7.3%).

The use of foreign resources varies across eligible knowledge-based activities, possibly revealing barriers specific to the eligible activity or to the skills it needs. For instance, projects producing electricity from garbage, data centres and forestry plantations operate with no foreign equity while those in biotechnology are fully foreign-owned (Annex 5.B). This could be because the BOI is not entitled to circumvent foreign ownership restrictions in activities under List One of the FBA, which includes forestry, for instance (Chapter 6). With respect to human capital, more foreigners could reflect more severe shortages in high-skilled workers among the Thai active population, as for instance in R&D activities.

Investment value or the number of projects may not be the most adequate indicators to assess investment promotion capacity in attracting knowledge-based projects since these do not necessarily require large capital and are less ubiquitous. To examine whether BOI schemes generate impact, another approach is to compare promoted and non-promoted firms' spending on R&D by using information from the industrial census. This approach does not determine whether incentives helped an investment to be realised or not but, once a promoted business is operating, whether spending on R&D are higher than for a non-promoted project, as should be expected. One advantage of this approach is that potential effects are not confined to activity-based incentives but can reflect merit-based incentives on R&D, even if these were introduced only in 2015 and have evolved since 2017.

The industrial census of Thailand reports businesses' spending on R&D, as it also does for training (see next section) and for other administrative and operational costs.[10] Three main observations can be drawn from the census (Table 5.4). Firstly, it shows that promoted manufacturers engaged more than their non-promoted peers in R&D activities. Secondly, promoted and non-promoted manufacturers allocated similar fractions of their budgets to R&D, although the promoted group spent larger amounts in Baht value. Thirdly, the percentage of promoted manufacturers that engaged in R&D and, even more so, the budget they dispensed to this activity were lower in 2016 than in 2011.

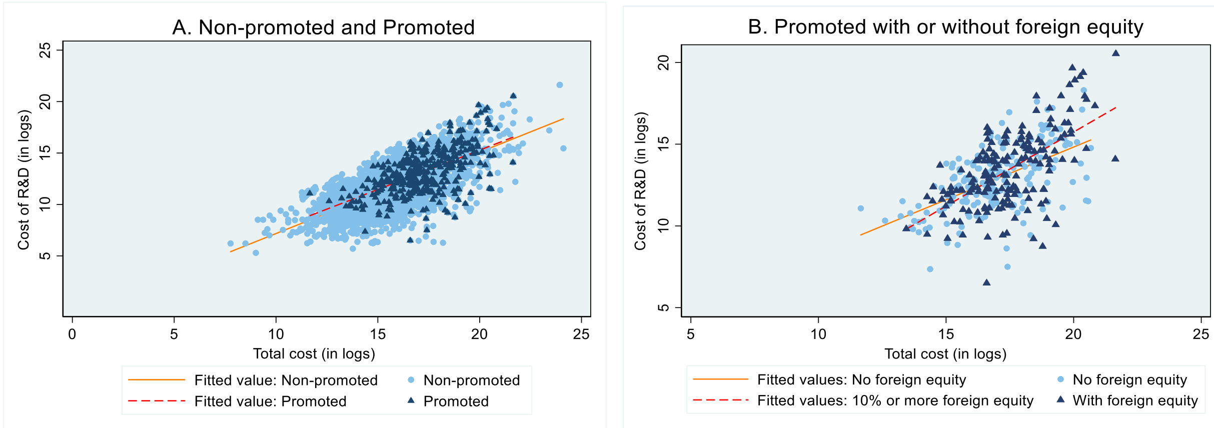
Table 5.4 Spending on R&D by promoted and non-promoted industrial establishments

	Establishments with R&D spending (% of all establishments)			Avg. spending on R&D (in millions of Baht)			Avg. spending on R&D (% of total spending)		
	Non-promoted	Promoted	All	Non-promoted	Promoted	All	Non-promoted	Promoted	All
2011	2.1%	15.9%	2.4%	2.34	15.8	4.25	6.8%	9.5%	7.2%
2016	2.7%	15.2%	3.0%	3.12	8.83	3.66	5.2%	5.6%	5.3%

Source: OECD based on the Industrial Census of Thailand 2012 and 2017.

Being promoted did not significantly affect manufacturers' likelihood to spend on R&D nor R&D-performers' budget allocation for this activity. Instead, establishments' size, and the associated costs they face as they are larger, drove most, if not all, of the operational costs on R&D (Figure 5.12, Panel A).[11] Foreign ownership also plays a role in driving R&D spending (see also Chapter 4). Within the group of promoted manufacturers, those with 10% foreign shareholding or more dedicated greater fractions of their budget to R&D relative to those with no foreign equity the larger they were (Panel B). Overall, promoted firms' higher spending on R&D is driven by their larger size and greater foreign shareholding but not necessarily their intrinsic status as promoted companies.

Figure 5.12. The relationship between firms' total expenditure and spending on R&D in 2016



Note: Observations include only establishments that reported their administrative and operational cost on R&D. Fitted values are point estimates based on simple linear regressions

Source: OECD based on the Industrial Census of Thailand 2017.

The analysis above has caveats, not least the absence of the services sector. Despite the limitations, the results are sufficiently reliable to challenge the assumption that existing incentives successfully support the knowledge economy and, more specifically, make a difference in boosting R&D investment in the manufacturing sector. The results suggest that investment promotion incentives, at least those in force until 2016, did not significantly push promoted manufacturers to dedicate larger fractions of their budget to R&D whether compared to non-promoted firms or compared to their previous R&D expenses in 2011. It is also plausible that measuring the impact of the new activity- and merit-based incentives in 2016 is too early given that they were only introduced in 2015.

The seemingly non-existent R&D premium for promoted businesses could also be for the reason that both promoted and non-promoted relied on other R&D incentive schemes than those granted by the BOI. Consultations with the government and stakeholders indicated that investors may favour the R&D tax incentive granted by the Revenue Department and the NSTDA over the BOI's merit-based R&D incentives as the latter has more complex criteria, thereby creating uncertainty for potential investors. In addition, as BOI's CIT exemptions are granted for 8-10 years for projects that are likely to invest in R&D, investors may not see the additional benefits of BOI's merit-based incentives on R&D expenditures (additional CIT exemptions), potentially reducing the attractiveness of this scheme.

In light of their complexity and relative generosity, the expected effects of the multiple R&D tax incentive schemes should be closely monitored by the Thai government. Ultimately, the government could envisage operating only one cost-based R&D tax incentive scheme that is open to both promoted and non-promoted firms. Meanwhile, international experience could help Thailand further refine the design of R&D tax incentives and bring them closer to good practices (Box 5.6).

Box 5.6. Maximising impacts of R&D tax incentives: International experiences

There is no clear-cut evidence (for OECD countries) as to which tax incentive instrument (credit, allowance, volume vs. incremental, etc.) is more effective in stimulating R&D. Tax credits or enhanced tax allowances (i.e. tax deductions) are often perceived as the least distortive type of tax incentive. Tax credits or tax deductions do not necessarily need to be applied on CIT. They can be applied to payroll taxes paid for R&D workers, as done in the Netherlands for instance. R&D tax incentives based on the wage bill paid to researchers is considered as a relatively successful Dutch measure (Hemels, 2019). Such an incentive is likely to generate higher knowledge spillovers than other types of R&D expenditures. Researchers move from one employer to another and take their former's employers knowledge with them. In addition, the measure could be attractive even if businesses benefit from CIT holidays.

Some good practices on R&D tax incentives suggest to target young firms but not by regions nor by firm size (a neutral approach would be to target SMEs), among other good practices. Some of the OECD practices in terms of R&D investment incentives do not necessarily imply that Thailand may need to adjust its policies, at least in the short-run. Since the state of economic and social development and context of various countries are different, it may still be relevant for Thailand to target, temporarily, specific regions or firms. Good practices of no over-subsidising and regular evaluation could be nonetheless applicable for all countries.

Some issues can arise with certain types of R&D incentives, such as patent-related incentives, in particular if the incentives help countries to attract patents, but not the research activity associated with the patent. This does not only reduce the beneficial impact of the incentive (e.g. in increasing research activity, employment, outcome etc. in the specific sector), but may also give rise to Base Erosion and Profit Shifting (BEPS). For example, multinationals may adjust the location of patents for BEPS reasons, but not create additional research activity in the country.

Tax incentives are not the only policy tool to boost R&D investment, putting aside the question of their effectiveness and the forgone revenues they can generate. The government can provide support to potential and existing R&D-performers with other tools. According to the industrial census of 2017, promoted firms are more vocal than their non-promoted peers on their need for government support to improve their knowledge and skills capabilities (also see Chapter 3). They need stronger support from the government with regard to advanced technology and machinery, providing R&D to meet market demand and training and skills development. As 70% of researchers in Thailand work in the public sector, the BOI could identify more specifically businesses' needs and play a more pro-active policy advocacy role to further align public research and academic programmes with the needs of both promoted and non-promoted firms.

After-care services are another tool IPAs can use to generate R&D investment. The expansion of existing investors seems to be the most common entry mode of R&D-intensive FDI (Guímon, 2009). Thus, the BOI could increase efforts to convince already established promoted firms to invest in R&D, particularly those reaching the end of their tax holidays and who would therefore benefit from the newly introduced R&D tax deductions. The BOI could also introduce new after-care services and further develop existing ones, with the objective of assisting the existing stock of foreign-owned companies in their efforts to attract new R&D mandates and retain existing ones. After-care services could target foreign manufacturers which are under a restructuring process, with the aim of transforming a potential risk of a divestment into the opportunity of an investment in R&D.

Policies to attract skill-intensive projects that spend on training start to pay off

Chapter 3 discussed the pressing need to address the skills gap in Thailand. The quality of basic education is low and deteriorating and the country has been suffering from a lack of adequate worker skills for decades. Government efforts and adaptation of firms to labour shortages may be starting to pay off in Thailand's manufacturing sector. For instance, manufacturing firms, particularly foreign-owned, increasingly engage in in-house training to address labour shortages (Chapter 4). More is needed, however, to reduce the skills gap and attract highly-skilled workers and investment promotion policies have a crucial role to play in attracting skill-intensive investment and foreign talents.

There are multiple ways through which Thai investment promotion policies support skills development. Most importantly, BOI's policies to attract higher-end foreign and domestic investments should mechanically result in attracting highly skilled foreigners to work in the promoted projects. As described in the previous section, foreign workers account for 7.5% of all workers in promoted projects while foreigners working in knowledge-based activities (A1 category) represent only 5% of all workers, which is rather unexpected in light of the plausibly higher needs for foreign talent in these less ubiquitous activities. The previous section also presented some of BOI's policies explicitly targeting foreign talent mobility and attractiveness such as the SMART visa programme. While the prospects are promising, it is early to assess the outcomes of this programme.

In addition to attracting skill-intensive investment projects and foreign talent, BOI's investment promotion policies support skills development by incentivising established businesses to undertake training activities for their own employees or for their local suppliers (e.g. merit-based incentives). Similar to R&D (see section above), the industrial census of Thailand allows to examine whether these policies helped skills development, as it reports establishments' spending on training in 2011 and 2016.

Several messages on the relationship between investment promotion and skills emerge from the census. Firstly, one out of two promoted manufacturers financed training activities, much more than the group of non-promoted manufacturers (Table 5.5). Secondly, promoted manufacturers allocated lower fractions of their administrative and operational budget to training, although the promoted group spent, on average, twice as much (in Baht value) on this activity. Thirdly, the ratio of promoted manufacturers that undertook training activities and the budget they dispensed to this activity were broadly similar in 2016 and 2011.

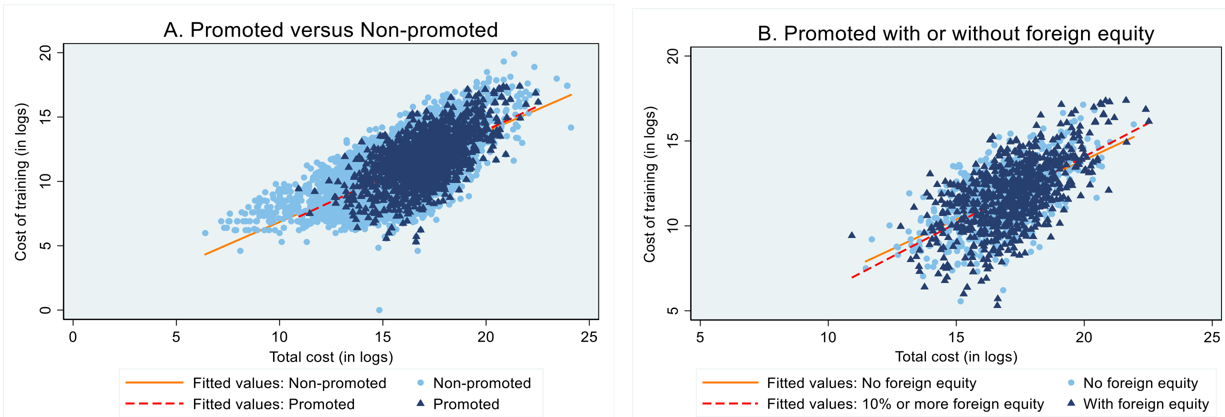
Table 5.5 Spending on skills by promoted and non-promoted industrial establishments

	Establishments spending on skills (% of all establishments)			Avg. spending on skills (in thousands of Baht)			Avg. spending on skills (% of total spending)		
	Non-promoted	Promoted	All	Non-promoted	Promoted	All	Non-promoted	Promoted	All
2011	5.6%	53.7%	6.6%	413	954	506	4%	1.40%	3.6%
2016	5.7%	56.6%	6.8%	648	790	672	2.80%	1.60%	2.6%

Source: OECD based on the Industrial Census of Thailand 2012 and 2017.

Further analysis confirms that being promoted raised manufacturers' likelihood to spend on training and increased their budget allocation to this activity, irrespective of their size, operating sector and foreign shareholding level. Notwithstanding the positive effects associated with an investment promotion certificate, the size of the establishment, and its administrative and operational budget, were behind most of the variations in the amount dedicate to training (Figure 5.13, Panel A).[12] In addition, within the group of promoted manufacturers, those with foreign shareholding dedicated greater fractions of their budget to training – relative to those with no foreign equity the larger they were (Panel B). Hence, promoted firms' higher spending on training is driven by their larger size, level of foreign shareholding and, unlike for R&D, also their promoted status.

Figure 5.13. The relationship between firms' total expenditure and cost of training in 2016



Note: Observations include only establishments that provided administrative and operational cost on training. Fitted values are point estimates based on simple linear regressions.
Source: OECD based on the Industrial Census of Thailand 2017.

The analysis above indicates that promoted companies make a difference in contributing to skills development and, more specifically, to training activities. Activity and merit-based tax incentives, at least those introduced in 2015 and in force until 2016, did significantly push promoted manufacturers to dedicate larger fractions of their budget to skills development compared to non-promoted firms. It is possible that the effects of the incentives that were introduced in 2015 are underestimated as they did not have enough time to materialise by 2016. The absence of the services sector from the industrial census could be one reason why the effects of investment promotion policies on training are more straightforward than for R&D. It is conceivable that tax incentives and R&D schemes are more effective in the services sector than in manufacturing.

Policies supporting the development of the EEC hide large territorial disparities

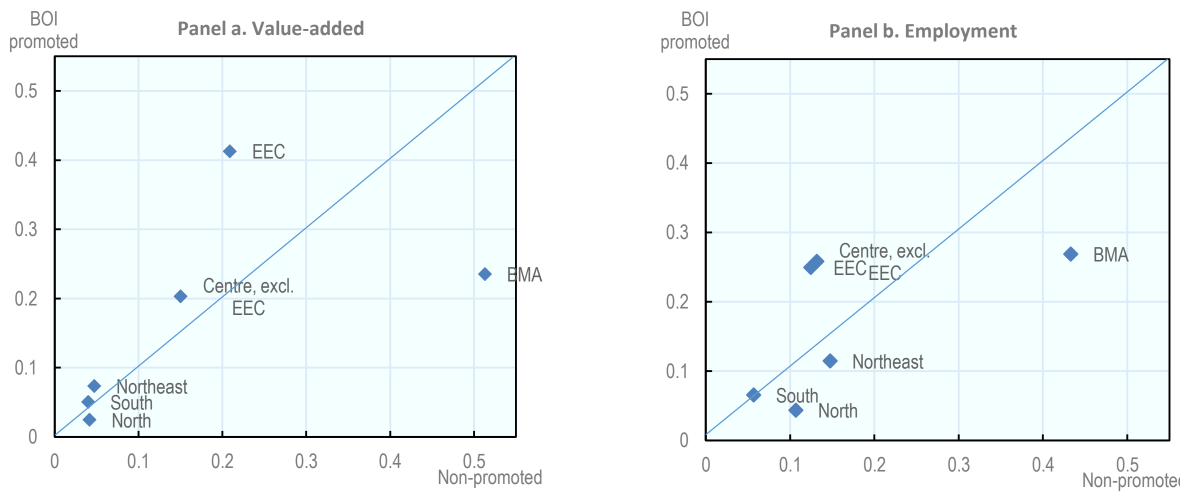
Foreign investment can help countries to join global production networks, regardless of their market size or location. Thailand has been trying hard to upgrade its participation in global value chains or to forge deeper connections between multinationals located in its territories and Thai companies. These attempts have consisted mostly of national investment policies, disregarding that each city or region in Thailand may be unique in the way it competes in national, regional and global trade and investment networks, as FDI networks analysis reveals.

The geography of promoted businesses in Thailand is shaped by the attractiveness of regions and cities but also by various location-based investment policies in place. One of the pillars of the 2015-2021 investment promotion strategy is dedicated to the development of specific regions, namely the EEC, border Special Economic Zones (South and Northern regions) and disadvantaged areas (mostly Northeast regions). While the objective behind the EEC is to support the development of high value-added S-curve sectors, the goal of the other targeted areas is to create jobs and reduce spatial income inequalities.

Analysis in Chapters 2 and 3 shows that Bangkok Metropolitan Area (BMA) and EEC have the potential to steer the Thai economy towards high-priority activities. The industrial census reveals that economic activity (i.e. value-added and employment) generated by promoted firms is disproportionally concentrated in EEC (Figure 5.14). In contrast, BMA is home to a quarter of promoted firms' value-added while non-promoted firms create half of their value-added and employment around the capital. As the statistics refer to the year 2016, EEC's remarkable outcomes reflect the geographical location and the not policy, which was introduced in 2017. Specific tax incentives to businesses in the EEC may be unwarranted in light of the strong attractiveness of the region.

Figure 5.14. Promoted firms disproportionally contribute to value-added in the EEC

Share of the region in value added and employment of promoted and non-promoted firms (total: 100%), 2016



Source: OECD based on the industrial census of Thailand 2017.

The contribution of promoted and non-promoted firms to economic activity of the northern and southern regions is much lower than in BMA and EEC but the behaviour of the two groups is similar (Figure 5.14). This may suggest that policies (e.g. SEZs) directed to less advanced areas are not necessarily bearing fruit. Consultations with stakeholders and the Foreign Investor Confidence Survey also suggested that the incentive for investing in SEZs may not outweigh the cost of setting up a factory in such zones (Belliger & co, 2015).

Industrial Zones (IEs) are one of the tools enabling the clustering of high value-added manufacturing firms, particularly those with a promotion certificate, around BMA and EEC. The vast majority of the 57 IEs are located in these two areas while only a handful are in the northern and southern regions. Manufacturers based in IEs obtain fiscal and non-fiscal privileges (e.g. the right to own land) as well as additional incentives if they apply for an investment promotion certificate. The industrial census shows that promoted firms are more likely than non-promoted firms to be located in an IE, and even more so if they are foreign-controlled. Promoted firms within IEs strongly contribute to the Thai economy – they make around half of their value-added and employment in IEs (Table 5.6).

Table 5.6 The contribution of promoted businesses to economic activity in Industrial Estates

In percent of all establishments, 2016

	Value-added			Employment		
	Industrial Estates	Rest of country	National	Industrial Estates	Rest of country	National
Promoted	16%	14%	30%	8%	13%	21%
Non-Promoted	15%	55%	70%	9%	70%	79%
All firms	31%	69%	100%	17%	83%	100%

Source: OECD based on the Industrial Census of Thailand 2017.

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Annex 5.A. Promoted activities between 2015 and 2019

Annex Table 5.A.1. Top 20 promoted activities

Based on data of submitted activities eligible for promotion, as released by the BOI between January 2015 and December 2019

code	name	# projects	% of total investment	Ratio of foreign capital	Ratio of foreign workers	Incentive group
	Top 20 activities	2221	54.6%	42.2%	12.2%	--
6.3	Oil refinery	4	5.5%	-	0.5%	B1
6.4	Manufacture of petrochemicals	23	5.0%	32.9%	1.1%	A3
7.3.2	Pipeline transportation (except for water pipeline)	7	5.0%	0.0%	0.0%	B1
7.1.1.2	Production of electricity or electricity and steam from renewable energy	796	4.6%	16.9%	1.6%	A2
4.8.4	Manufacture of rubber tire for vehicle	40	4.5%	92.9%	7.6%	A2
7.3.1	Rail transport	3	3.8%	-	0.3%	A2
7.3.4	Air transport services	52	3.3%	41.6%	9.7%	A3
7.23.1	Hotels	78	3.0%	57.8%	2.3%	A4/B2
4.16	Manufacture of Hybrid Electric Vehicle and parts	8	2.5%	-	0.7%	Expired
1.17	Manufacture or preservation of food and beverages using modern technology	339	2.4%	37.4%	29.5%	A3
6.5	Manufacture of specialty polymers or speciality chemicals	33	2.3%	78.6%	7.0%	A2
4.1.3	Manufacture of other metal products including other metal parts	236	2.0%	86.1%	5.2%	A4
7.1.4	Facilities for cargo ship using modern technology	20	1.9%	3.4%	0.6%	A3
4.8.17	Manufacture of other vehicles parts	180	1.9%	93.4%	1.5%	B1
5.4.2	Manufacture of solar cells and/or raw materials for solar cells	11	1.5%	100.0%	5.0%	A2
5.2.5	Manufacture of parts and/or equipment for other electrical products	50	1.4%	95.7%	2.7%	B1
7.3.3	Maritime transportation services	188	1.2%	4.4%	2.6%	A2
6.1	Manufacturing of chemical products for industry	112	1.0%	83.0%	8.4%	A4
1.16.1	Manufacture of fuel from agricultural products	16	0.9%	14.4%	2.0%	A2
7.1.1.1	Production of electricity or electricity and steam from garbage or refuse derived fuel	25	0.9%	0.0%	0.2%	A1

Note: Data based on 276 promoted activities; *Activity investment size in % of total investment size; **mean foreign capital and worker by top 20 activities; ***A1: most generous incentives; B2: least generous incentives.
Source: OECD based on BOI Statistics and the Guides to the BOI between 2015 and 2019.

Annex 5.B. Applications for knowledge and technology-based incentives

Annex Table 5.B.1. Applications eligible for investment promotion: January 2015 - December 2019

code	name	# projects	Investment (billion Baht)	% foreign capital	% foreign workers
		443	105895.5	51.3%	4.6%
1.3	Economic forest plantation	1	21	-	0.0%
3.9	Creative product design and development centre	6	221.2	94.6%	7.0%
5.6	Electronics design	7	678.12	-	1.3%
7.10	Cloud service	13	2356.95	62.2%	6.6%
7.11	R&D	85	9633.42	40.3%	8.6%
7.12	Biotechnology	6	2526.5	100.0%	3.7%
7.13	Engineering design	33	367.192	70.2%	17.0%
7.14	Scientific laboratories	57	4192.1	19.8%	2.2%
7.15	Calibration services	13	173.43	0.0%	1.2%
7.8	Energy Service Company (ESCO)	1	357	-	0.0%
4.11.1	Manufacture of Aircraft or Aircraft Parts	13	7226.53	46.8%	2.2%
4.11.5	Manufacture of Aerospace Devices and Equipment	1	61.2	100.0%	0.0%
4.5.1.1	Automation machinery and/or automation equipment with engineering design	23	1912.9	53.6%	6.2%
5.6.1	Microelectronics design	2	4	40.0%	15.0%
5.6.2	Embedded system design	16	148.37	5.8%	5.5%
5.7.1	Embedded software	39	1110.5	23.8%	9.3%
5.7.3	High Value-Added Software	47	646.43	55.6%	6.7%
7.1.1.1	Production of electricity or electricity and steam from garbage or refuse derived fuel	25	26534.3	0.0%	0.2%
7.12.1	R&D or manufacturing of seed industry, etc. (biotech)	6	2166.2	73.1%	3.9%
7.12.2	R&D or manufacturing of biopharmaceutical agent (biotech)	3	1797	-	3.3%
7.12.3	R&D or manufacturing of diagnostic kits (biotech)	3	162	49.0%	1.2%
7.12.4	R&D or manufacturing of bio-molecule and bioactive substance (biotech	10	15898.9	99.7%	2.1%
7.12.5	Manufacture of raw materials or essential materials for molecular biological R&D	1	35	50.0%	2.9%
7.19.1	Vocational training centers	7	501.4	97.5%	13.8%
7.9.2.1	Science and technology park	1	2600	-	0.0%
7.9.2.2	Digital park	1	1580.98	0.0%	3.6%
7.9.2.3	Data center	4	6480.5	38.3%	1.4%
7.9.2.4	Innovation incubation center	11	187.96	27.6%	11.5%
8.1.1	Biotech development	6	15176.8	37.4%	4.7%
8.1.4	Digital technology development	2	1137.6	3.6%	2.8%

Note: based on 276 activities eligible for investment promotion. Technology-based incentive belong to Section 8 of the Guide to the BOI. Knowledge-based activities focussing on R&D belong to the group of A1 incentives.
Source: OECD based on BOI Statistics and the 2019 Guide to the BOI.

Notes

[1] The name of the agency changed from “Board of Industrial Investment” to “Board of Investment”.

[2] The other government agencies include the Ministry of Digital Economy and Society, the National Research Council of Thailand, the National Science and Technology Development Agency, the Office of National Higher Education, Science, Research and Innovation Policy Council, and the Thailand Research Fund.

[3] According to the BOI’s Foreign Investor’s Confidence Survey 2018, 45% of respondents indicate that incentives are main factor for their decision to invest or maintain their investment in Thailand.

[4] Announcement of the Office of the Board of Investment No. Por. 11/2561 on the “Permission to Employ Unskilled Foreign Workers in Promoted Projects”.

[5] In Thailand small enterprises in the industry or services sector are defined as firms with less than 50 employees and 50 million Baht fixed asset excluding land cost capital (1.6 USD million). Medium enterprises are defined as firms with 50 to 200 employees and a capital of 50 to 200 million Baht (1.6 to 6.6 USD million).

[6] The estimated effect is based on a firm-level regression with sector fixed effects. Dependent variable: labour productivity (in logarithms). Independent variables: share of foreign equity, promotion certificate and firm size. Promotion certificate is a dummy variable that takes value 1 if the company has a certificate and 0 otherwise. As the dependent variable is in log and investment promotion certificate is a dummy variable (0 or 1), the percentage impact of holding a certificate on productivity is given by 100*(exponential*(*point estimate*)-1).

[7] This analysis is incomplete as it only measures the impact on labour productivity. Using the same data - the Industrial Census of Thailand, World Bank (2020) shows that holding an investment promotion certificate has no significant positive impact on total factor productivity.

[8] The secretary general of the BOI sits on the governing board of the NSTDA, which must allow for co-ordination and more effective policy advocacy to foster private investment in R&D.

[9] Adequate micro-level data and empirical tools are needed to explore this question in a counterfactual setting and in account of the heterogeneity of effects across different types of firms.

[10] The Industrial Census of Thailand excludes expenditures on production and sales (e.g. the purchase of materials and components or the cost of fuels and electricity used in the production process) from the administrative and operational expenses.

[11] Econometric analysis shows that, in the preferred specification, a promotion certificate was not significantly associated with spending on R&D in 2016 both at the extensive margin (whether a firm spends on R&D or not) and intensive margin (the intensity of R&D spending).

[12] Econometric analysis shows that, in the preferred specification, a promotion certificate was significantly associated with spending on training in 2016 both at the extensive margin (whether a firm spends on training or not) and intensive margin (the intensity of training spending).

6 Improving Thailand's foreign investment regime

This chapter focuses on barriers to entry and operation of foreign investors in Thailand. It explains why reducing barriers and facilitating operations for investors from abroad matter in a world of global value chains and in which Thailand aspires to move into higher value added activities in manufacturing and, particularly, in services. The chapter describes Thailand's regime of FDI regulatory restrictions. It also points to exemption schemes and legal loopholes in the Foreign Business Act, generating uncertainty for investors and potentially affecting Thailand's FDI attractiveness. The chapter identifies a number of policy options for consideration by the authorities.

Summary

It has long been recognised that globalisation offers substantial opportunities for participating countries, but that it also requires an ability for rapid adjustment for them to benefit from these opportunities (OECD, 1999). Possibly no other region has grasped such opportunities as well as Southeast Asia. Thailand was among the first in the region to recognise the powerful role that foreign investors could play in fuelling export-led growth, and was quick in opening up to foreign investment, albeit selectively (mostly in manufacturing as demonstrated below). As with any other policy, there are likely aspects which could have been better designed or implemented, but few today would call those policies into question altogether. There is a broad understanding that such policies and the FDI they subsequently fostered has enabled Thailand to emerge as one of the region's leading manufacturing hubs to the benefit of the Thai economy and its society more broadly.

As in many other emerging economies, there has not been any backtracking from those early FDI liberalisation efforts, but nor has there been much further liberalisation since then. Over time, other ASEAN Member States (AMS) have caught up and even surpassed Thailand in terms of openness to FDI. Partly as a result, Thailand is no longer attracting FDI as it used to, despite the increased appetite of foreign investors in the region (Chapter 4).

Thailand's primary and services sectors remain particularly restrictive to foreign investment according to the OECD FDI Regulatory Restrictiveness Index. Services liberalisation has typically lagged behind that of manufacturing in most countries, and, in this respect, Thailand's experience is no different. Thailand had adopted a rather successful export-oriented FDI strategy relatively early and recently established the 'Thailand 4.0' vision of becoming a high value- added, high income economy by 2037 (Chapter 2). However, various service sectors, considered as a means for achieving this vision, still remain partly off limits to foreign investments. In the modern context of intensified regional and global value chains (GVCs), FDI policies can no longer treat services and goods manufacturing separately.

As argued in Chapter 3, the development of competitive service sectors has great potential to enhance inclusive growth and productivity in Thailand. Besides providing productive job opportunities, services have major implications for the development and upgrading of Thailand's manufacturing industries, notably in a context of GVCs. Modern services can enable more efficient and resilient supply chains and play an increasingly important role as inputs into advanced manufacturing and innovation. The growing 'servicification' of manufacturing activities is reflected in the increasingly significant share of services value added embedded into manufacturing value added. But Thailand's services development still lags behind that of economies with a profile similar to what is aimed for with Thailand 4.0 (Chapter 3). Services account for about 30% of the value added embedded in its manufacturing exports, which is only slightly below the OECD average, but only about half of it is domestically generated (the rest being imported), against about 90% in the case of OECD economies.

It is, therefore, timely for Thailand to reflect on its strategy towards developing such a high-end services and high-tech manufacturing economy envisioned in the 20-Year National Development Strategy and in its Thailand 4.0 initiative. As with its export-oriented manufacturing strategy back in the 1990s, there are likely positive ways in which services FDI liberalisation could be helpful in this context. Although services tradability has increased over time with the rise of digital and communication technologies, they remain naturally more complex to trade than goods. Unlike trade in goods in which factors of production are built into the traded goods themselves, services typically require the actual relocation of capital and labour across borders, often through FDI.

Thailand's current FDI policy concerning services still shares similarities with its policy back in the early 1970s, with the exception of investment incentives (Chapter 5). Back then, faced with a backlash against growing foreign investment in Thailand, the government promulgated the Announcement of the Revolutionary Council No. 281 of 1972 (ARC. 281), which was the first law explicitly governing FDI. The act introduced strict barriers to entry and operation of majority-foreign investors across all sectors, including manufacturing and services. The objective was overtly to protect indigenous Thai businesses given that Thai technology was not yet competitive, complemented by considerations about national security in a few sectors.

In 1999, the law's incompatibility with the country's attempt to promote foreign investment and international trade and the more open approach adopted in other countries gave rise to the Foreign Business Act (FBA), still in force today. The FBA liberalised FDI in many sectors, mostly in manufacturing, but still kept most of the restrictions pertaining to services. Apart from the FBA, the government exercises similar controls through sector-specific and other legislation, which prevail over the Act. Looking back, the liberalisation embodied in the FBA was circumscribed even in manufacturing where, unusually given the experience worldwide, it kept some restrictions as well. Compared to other economies in the region at the time, Thailand still maintained a relatively more open environment to FDI, but with almost no additional FDI liberalisation in Thailand since then, many other ASEAN Member States have now surpassed Thailand in openness.

While the stipulations of the FBA remains relatively restrictive on paper, foreign investors have explored exemption channels allowed by law or benefited from preferential treatment accorded to them under bilateral treaties. Promoted investors under the Investment Promotion Act and the Industrial Estate Authority of Thailand Act can also benefit from exemptions. Some foreign investors have also found ways into restricted activities through nominee structures, which are not officially permitted in Thailand. Some other foreign investors have recourse to less transparent business structures, such as preferential shares and indirect ownership, to by-pass some of the restrictions in place.

Hence, in practice, Thailand has been more open than a simple reading of the legislation would suggest. But the resulting policy inconsistency of restricting and selectively exempting FDI, as well as the uncertainty associated with some legal loopholes used by investors to by-pass some of the restrictions in the FBA are likely to come at a cost for investors and Thailand. It is difficult to establish how prevalent some of these practices are, but they have caught the attention of the authorities on a few occasions. In 2007, for instance, the Ministry of Commerce prepared a bill to amend the FBA to limit if not end existing legal loopholes, which would render the regime *de facto* more restrictive, but the proposed reform did not go forward in the face of opposition from investors.

Considering all these issues, it seems timely and appropriate for Thailand to undertake an assessment of the impact of the FBA and remaining sectoral restrictions to FDI on the economy. For almost 50 years, various domestic services industries have to a great extent been insulated from foreign competition. To what extent has this policy served its intended public purpose of enabling the development of vibrant local firms and capabilities? Are there activities or sectors that may no longer need insulation from foreign competition? Has this policy indirectly and disproportionately affected other parts of the economy that did not benefit from this treatment?

Available empirical evidence suggests a number of potential costs associated with discriminatory policies against FDI. Not surprisingly, statutory restrictions are found to have a significant negative effect on a country's ability to attract FDI. This is the case even for partial restrictions on FDI, such as foreign equity limitations and discriminatory screening and approval mechanisms (Mistura and Roulet, 2019; Fournier, 2015; Nicoletti et al., 2003). For Thailand, an illustrative simulation exercise using the average elasticity obtained in Mistura and Roulet (2019) suggests that if Thailand were to reduce restrictions to the 50th and 25th percentile levels of OECD FDI Regulatory Restrictiveness Index, inward FDI stocks could be 25% to 80% higher, respectively. But beyond any impact on FDI inflows, there is evidence that consumers and manufacturing sectors are also negatively affected by FDI restrictions in services sectors (OECD, 2019; Spinelli and Rouzet, 2016).

The right of governments to favour some investors over others in order to achieve social, economic or environmental goals is widely accepted, but any policy that discriminates against one group of investors involves a cost. Discriminatory measures can thus only serve the broader public interest to the extent that their potential costs in terms of forgone investment and potential efficiency gains are compensated by broader social and economic benefits. For this reason, they need to be constantly re-evaluated to determine whether their original motivation remains valid, supported by an evaluation of the costs and benefits, including an assessment of the proportionality of the measure to ensure they are not greater than needed to address specific concerns (OECD, 2015a).

Main policy options for consideration by the authorities

- Undertake a comprehensive regulatory impact assessment of existing restrictions on FDI and publish the results. Include an assessment of potential non-discriminatory measures that could achieve the same objectives as the FBA.
- Reform the institutional setting of the Foreign Business Commission in charge *inter alia* of annually reviewing and proposing amendments to the list of restricted activities for consideration by the Minister, notably to include representatives of Office of the Trade Competition Commission, civil society and academia, as well as from the Joint Foreign Chambers of Commerce of Thailand. Render meeting records and any documentation supporting deliberations associated with non-confidential matters, such as the review of the lists of restricted activities, public.
- Revise the FBA to fully reflect foreign investment restrictions found in other laws, and to codify current practice where feasible, considering the various institutionalised exemptions and legal loopholes permitted by the legislation. Additionally, clarify the scope of application of listed activities by indicating their standard industrial classification code under Thailand's Standard Industrial Classification.
    - Some recent liberalisation announcements and amendments to the FBA are negated because some 'liberalised' activities remain restricted by sector-specific regulations which prevail over the FBA. This undermines one of the positive aspects of the FBA, which is to bring all the restrictions pertaining specifically to foreign investors under one umbrella, as a kind of negative list for foreign investors.
    - Thailand's FDI restrictiveness is attenuated *de facto* through the existence of exemption schemes. Nevertheless, regulatory uncertainty and legal loopholes for foreign investors to by-pass some of the regulatory restrictions on FDI, should also be addressed.
    - The dual-track option between the FBA and the Law on Investment Promotion demonstrate flexibility towards FDI. For better regulatory certainty, it is suggested that authorities could further eliminate any existing policy inconsistency, for instance, with activities which are promoted under the Law on Investment Promotion and at the same time restricted in the FBA, and with activities and sectors where the use of preferential shares and indirect holdings is not covered by the FBA.
- Further liberalise FDI restrictions particularly in services sectors to match levels of openness in other emerging economies and to foster greater convergence towards Thailand 4.0.
    - Many primary and services sectors remain partly off limits to foreign investors, potentially limiting economy-wide productivity gains.
    - Most restrictions date from the 1970s. They were introduced to shield Thai businesses from foreign competition until they were ready to compete on their own. There have been few changes to the regulatory environment since then.
    - In the current context of GVCs and the intensified 'servicification' of manufacturing activities, restrictions on FDI in service sectors also possibly discriminate against Thai manufacturing producers and consumers, who may have to pay relatively higher prices for needed quality-adjusted services inputs.

- Align the general minimum capital requirement for foreign investors to start a business in Thailand with capital requirements for domestic investors.
  - The current minimum capital policy is particularly stringent for investors in less-capital intensive activities, including many high-value added services that could contribute to Thailand's 4.0 strategy.
  - Worldwide, where minimum capital requirements still exist, they are rarely discriminatory – in 2012 only eight countries out of 98 assessed in the World Bank's Investing Across Borders imposed a discriminatory minimum capital requirement – and typically much lower than what is required from foreign investors in Thailand. This is the case even across economies with a level of income per capita much greater than that of Thailand.

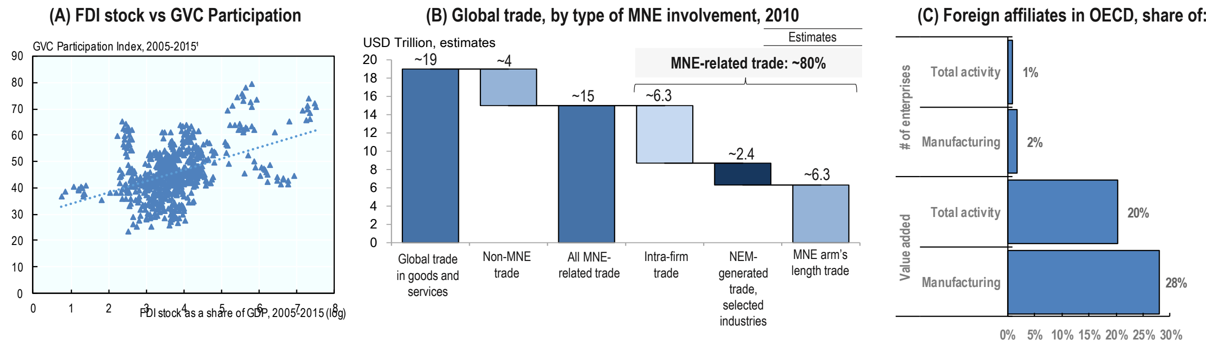
GVCs make barriers to FDI entry and national treatment particularly relevant

GVCs have become an important driver of productivity and economic growth across countries, both in developed and developing countries (OECD, 2015b; World Bank, 2019; Kowalski et al, 2015). The increased international fragmentation of production processes associated with GVCs can be observed in the significant growth in intermediate goods and services trade in past decades. Recently, more than 70% of world service imports were estimated to be intermediate services, and more than 50% of world manufactured imports were intermediate goods (OECD, 2013). Now more than ever firm competitiveness, and consequently that of countries, depends as much on its capacity to import high-quality inputs as on its capacity to export. Firms rely more intensively on access to cheaper or more differentiated and better world-class quality inputs to increase or maintain their productivity – in other words, they import in order to export successfully.

Multinational enterprises (MNEs) play a central role in international production networks, with a large share of cross-border trade taking place within affiliated networks (Figure 6.1). UNCTAD (2013) estimates that MNEs account for about 80% of global trade in goods and services, about 42% of which is intra-firm trade (Figure 6.1, Panel B). Cadestin et al. (2019) estimate a smaller participation but nonetheless important: roughly one-half of international trade. FDI is therefore an important channel through which countries integrate and benefit from GVCs (Figure 6.1, Panel A). MNEs and their foreign affiliates are typically only a small fraction of the enterprise population, but play a much greater role in terms of outcomes, partly because they are typically engaged in more capital- and scale-intensive industries (Figure 6.1, Panel C; OECD, 2013 and 2019). They usually account for a large share of exports and value added, and while part of the value added created may be repatriated, the rest stays in the host country in the form of labour compensation, taxes and reinvestments.

Depending on how strongly they are integrated into domestic economies, MNEs also represent a source of access to international markets and new technologies for their domestic suppliers and buyers, including SMEs, besides contributing to knowledge spillovers for domestic value chains. Every USD 1 of extra sales by foreign affiliates generates, on average, another USD 0.62 for the domestic economy in which they are located (Cadestin et al., 2019). The extent to which countries can provide the necessary conditions for global production networks to operate efficiently is, therefore, a key determinant of their success in linking to and upgrading within GVCs. Multinational firms' location decisions are much influenced by their need to ensure predictable and reliable supply-chains, capable of delivering effectively at each stage of the production chain (Taglioni and Winkler, 2014).

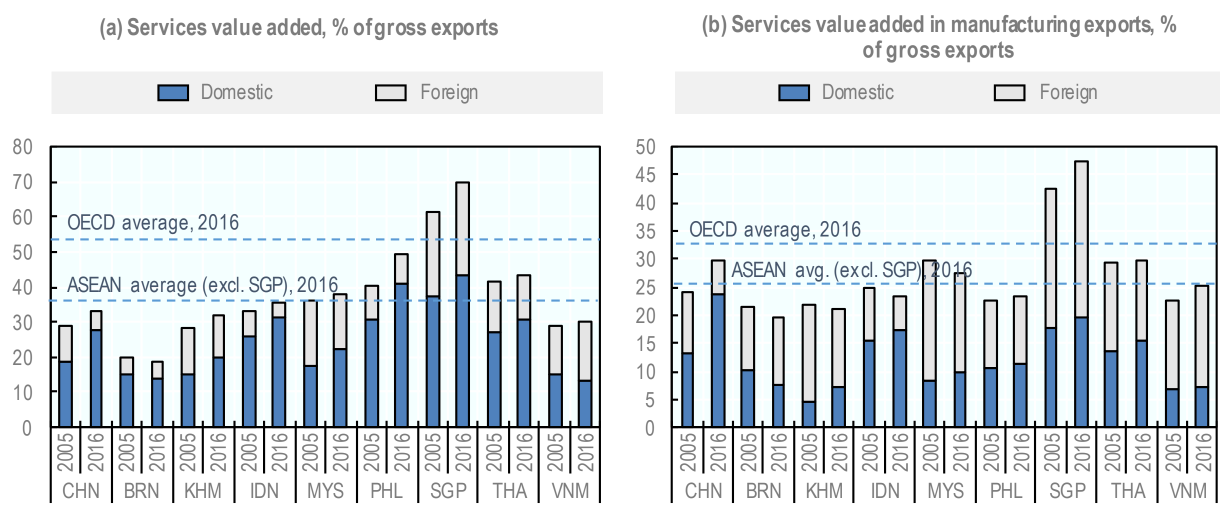
Figure 6.1. The importance of FDI in global value chains



Note: ¹GVC participation index refers to the share of foreign inputs (backward participation) and domestically produced inputs used in third countries' exports (forward participation) in a country's gross exports. See Koopman et al. (2010) for more information. NEM: non-equity modes.
Source: OECD (2014); UNCTAD statistics; UNCTAD (2013) and OECD AMNE Statistics (data for 2014).

The performance of services sectors play an important role in this context. Services are a significant channel for value added generation in the context of GVCs (OECD, 2020). Worldwide, while the share of services in gross exports is relatively limited, service sector activities contribute almost half of the value added inputs to exports (De Backer and Miroudot, 2013). In ASEAN, despite recent improvements, services value added embodied in exports, whether supplied locally or imported, remain subdued (38% excluding Singapore) compared to the OECD average (54%). In Thailand, services valued added share of gross exports stood at 43% in 2016 (Figure 6.2, Panel A), but for over a decade its domestic component has typically grown more slowly than in the other more advanced AMS.

Figure 6.2. Services value added share of exports and of manufacturing exports



Note: Domestic refers to the share of value added produced in the country either by locally-owned services providers or foreign affiliates in the country. Foreign refers to the share of imported value added from service providers located abroad. Service industries include construction, wholesale and retail, hotels and restaurants, transport and communications, finance, real estate and business services as well as public services, i.e. ISIC Rev.4 Divisions 41 to 98.
Source: OECD TiVA database.

In addition, services play an increasingly important role in value added generation in manufacturing activities, either as inputs for production of manufacturing goods or corporate services activities within firms, as well as bundled together with goods sold (Miroudot and Cadestin, 2017). This "servicification" of manufacturing activities is clearly evidenced when one looks at the decomposition of value added embodied in manufacturing exports (Figure 6.2, Panel B). In OECD economies for instance, services inputs account for about one-third of the value added embedded in manufacturing exports, and adding the in-house provision of services in manufacturing firms, the share of services in manufacturing exports increases to 50% (Miroudot and Cadestin, 2017). In ASEAN and Thailand, the share of services value added embedded in manufacturing exports (excluding in-house services) stands at 26% and 30%, respectively. While most of it is domestically generated in OECD economies (about 90%), in Thailand only about half or less is domestically produced by Thai or foreign-owned companies established in Thailand; the rest is imported.

Barriers to FDI entry and the absence of national treatment in services sectors may, therefore, be an additional deterrent for developing competitive services and downstream manufacturing activities (see discussion further below). Worldwide, FDI activity has been particularly intense in the service sector in the last decade, bringing service sector FDI stocks to more than 60% of total stocks (UNCTAD, 2013). Thailand is no longer attracting FDI as it used to, despite foreign investors' increased appetite for the region in the last decade, and its relatively restrictive environment for FDI in services sectors puts it at a weaker position to capture some of the associated opportunities (OECD, 2019).

Thailand's foreign investment regime could benefit from further liberalisation

Like most other ASEAN economies, Thailand is quite restrictive to FDI according to the OECD FDI Regulatory Restrictiveness Index (Figure 6.3; Box 6.1). Governments all over the world discriminate among investors in one way or another, sometimes deliberately, sometimes unwittingly. The extent of FDI regulatory restrictiveness observed in Thailand, however, is much higher than in most other emerging and developing countries, and is even higher than in some of its direct ASEAN peers, such as Singapore and Viet Nam.

Box 6.1. Calculating the OECD FDI Regulatory Restrictiveness Index

The OECD FDI Regulatory Restrictiveness Index seeks to gauge the restrictiveness of a country's FDI rules. The FDI Index is currently available for almost 80 countries. It is used on a stand-alone basis to assess the restrictiveness of FDI policies in reviews of candidates for OECD accession and in OECD Investment Policy Reviews, including reviews of new adherent countries to the OECD Declaration on International Investment and Multinational Enterprises.

The FDI Index does not provide a full measure of a country's investment climate since it does not score the actual implementation of formal restrictions and does not take into account other aspects of the investment regulatory framework which may also impinge on the FDI climate. Nonetheless, FDI rules are a critical determinant of a country's attractiveness to foreign investors and the Index, used in combination with other indicators measuring various aspects of the FDI climate, contributes to assessing countries' international investment policies and to explaining the varied performance across countries in attracting FDI.

The FDI Index covers 22 sectors, including agriculture, mining, electricity, manufacturing and main services (transport, construction, distribution, communications, real estate, financial and professional services). Restrictions are evaluated on a 0 (open) to 1 (closed) scale. The overall restrictiveness index is a simple average of individual sectoral scores. For a detailed description of the scoring methodology, please refer to the technical working paper by Kalinova et al. (2010).

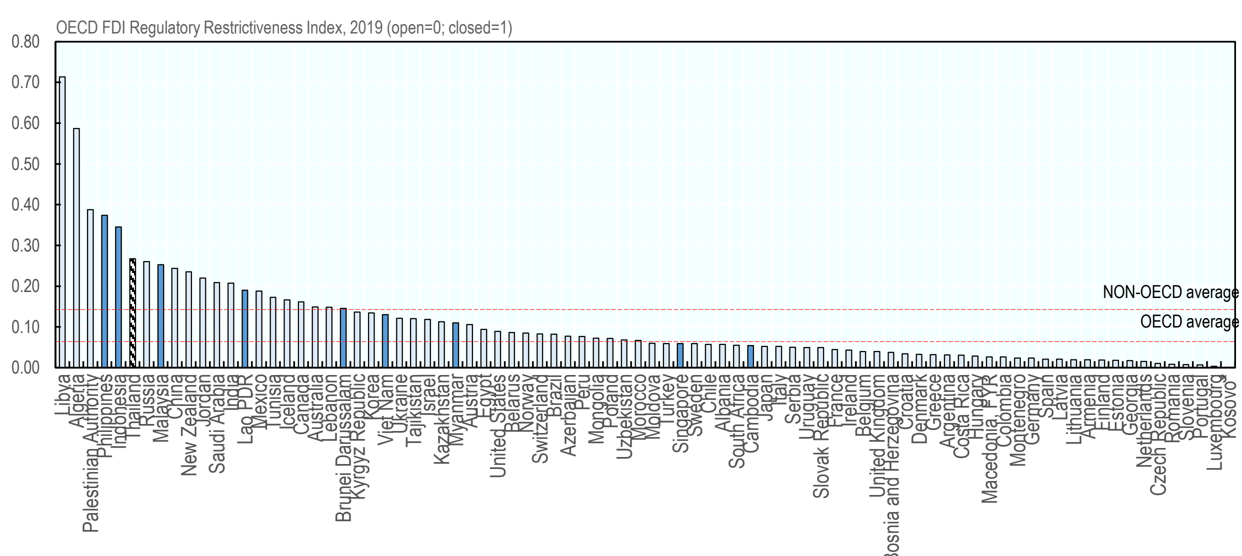
For each sector, the scoring is based on the following elements:

- the level of foreign equity ownership permitted,
- the screening/approval procedures applied to inward foreign direct investment;
- restrictions on key foreign personnel; and
- other restrictions, e.g. on land ownership, corporate organisation (branching).

The measures taken into account by the Index are limited to statutory restrictions on FDI typically reflected in official OECD instruments on investment or identified in OECD Investment Policy Reviews and yearly monitoring reports. The discriminatory nature of measures, *i.e.* when they apply to foreign investors only, is the central criterion for scoring a measure. State ownership and state monopolies, to the extent they are not discriminatory towards foreigners, are not scored. Preferential treatment for special-economic zones and export-oriented investors is also not factored into the FDI Index score, nor is the more favourable treatment of one group of investors as a result of preferential treatment under international agreements.

Thailand's current FDI regime can trace its origin back to its first regulation on FDI established in 1972. At the time, concerned with the growing number of foreigners investing and operating in Thailand, the government promulgated the Announcement of the Revolutionary Council No. 281 of 1972 (ARC 281). Seeking to protect Thai businesses from foreign competition, in addition to some considerations about national security in a few sectors, the ARC introduced strict barriers to entry and operation of foreign investors across the board, including in manufacturing and services sectors.

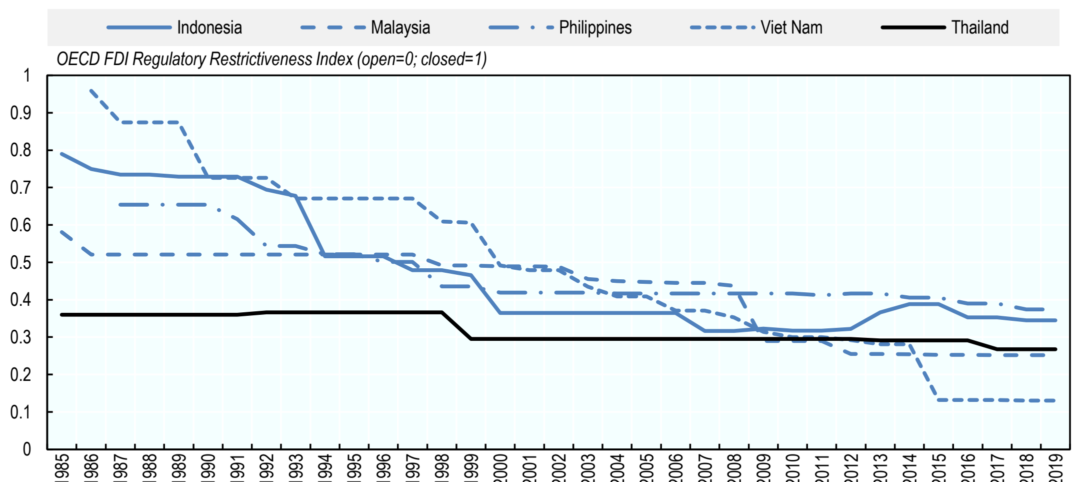
Figure 6.3. OECD FDI Regulatory Restrictiveness Index, 2019



Note: The OECD FDI Regulatory Restrictiveness Index covers only statutory measures discriminating against foreign investors (e.g. foreign equity limits, screening & approval procedures, restriction on key foreign personnel, and other operational measures). Other important aspects of an investment climate (e.g. the implementation of regulations and state monopolies, preferential treatment for export-oriented investors and SEZ regimes among other) are not considered. Data reflect regulatory restrictions as of end-December 2019. Please refer to Kalinova et al. (2010) for further information on the methodology.
Source: OECD FDI Regulatory Restrictiveness Index database, http://www.oecd.org/investment/fdiindex.htm; See also the ASEAN FDI Regulatory Restrictions Database for information on the underlying measures captured in the Index, https://qdd.oecd.org/subject.aspx?Subject=ASEAN_INDEX.

While other AMS continued to liberalise their investment regimes over time, there have been only a few revisions to Thailand's FDI regime since the 1970s (Figure 6.4). The most important was the enactment of the Foreign Business Act in 1999, which repealed the ARC and reduced to a great extent (albeit not entirely) FDI restrictions mainly in manufacturing. The FBA is not the only legislation governing the participation of foreign investors in the Thai economy. Some restrictions also exist in sector-specific legislation, which prevails over the FBA. As such, over time Thailand has slowly lost much of that relative competitive edge it had in terms of friendliness to foreign investors which had helped to position it among the main recipients of FDI in the region in the 1990s.

Figure 6.4. OECD FDI Regulatory Restrictiveness Index: an historical perspective, 1985-2019



Note: See note to Figure 6.3 above.
Source: Author's elaboration based on the OECD FDI Regulatory Restrictiveness Index methodology.

More recently, a few amendments to the FBA have narrowed the list of activities in which Thai businesses are not yet ready to compete with foreigners and in which foreign majority shareholding is only allowed subject to approval by the Director-General of the Department of Business Development and the Foreign Business Council. However, some of these changes have had only a limited effect *de facto*, because many of the activities removed from the list remain restricted in sector-specific regulations.

The government nevertheless continues to contemplate further services FDI liberalisation. In 2019, the Foreign Business Commission reviewed the list of restrictive business categories under the FBA and identified four additional activities to be removed from the list, namely: i) telecommunications business (type 1 licence) in accordance with the Telecommunications Business Act; ii) treasury centres in accordance with the Exchange Control Act; iii) certain aircraft maintenance; iv) high value-added software development activities. Proposed changes are not yet in force, awaiting needed ministerial regulations for becoming effective, but they denote a welcoming step towards modernising Thailand's foreign investment regime. Foreign investments in these activities would then be dispensed from obtaining a foreign business licence under the FBA (see below). The proposed changes are justified *inter alia* on the basis of the importance of such business categories for supporting the development of Thailand's 'New S-curve' digital industries (see Chapter 3 and 5), as well as on the need to reduce duplication of government oversight as these businesses are governed by specific laws. Another 18 business categories are proposed to remain restricted until further study is undertaken by the Foreign Business Commission (FBC, 2019).

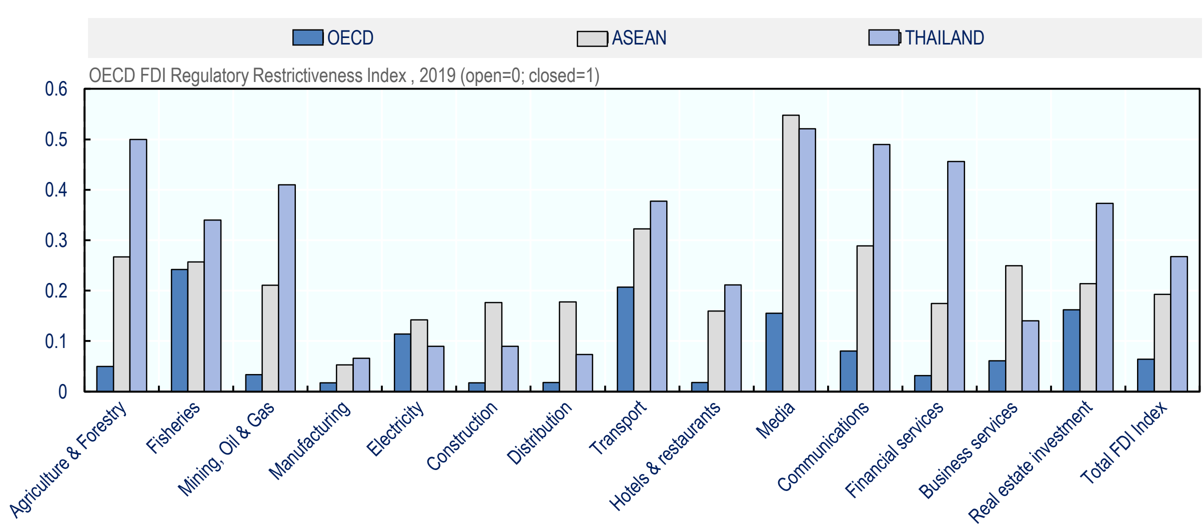
Domestic manufacturers and consumers would benefit from services liberalisation

Many primary and services sectors remain partly off limits to foreign investors, often to an extent that exceeds considerably the ASEAN average (Figure 6.5). Services liberalisation has particularly lagged behind that of manufacturing almost everywhere, including in OECD countries, finding strong resistance in powerful domestic interest groups. But having shielded domestic service providers from foreign competition for half a century –since the ARC first introduced most of the restrictions – Thailand has not only been treating foreign investors differently, but has also implicitly favoured Thai services providers over domestic consumers and manufacturers. Barriers to establishment enable incumbent services firms shielded from foreign competition to raise their prices, affecting downstream activities and end-consumers (see discussion below on the implications of FDI restrictions).

The development of efficient services depends as much as on policies that eliminate discrimination and barriers to entry and allow for greater competition and contestability pressures, as on policies that promote an efficient regulatory environment behind the borders to all firms in the sector, including in relation to competition policy (see Chapter 7 for a discussion on Thailand's competition framework). A more granular analysis of the domestic regulatory regime in services is beyond the scope of this review, as service sectors are quite diverse and would require a more industry-specific approach. Market access barriers, on the other hand, share commonalities across service sectors and allow for a more general discussion within this chapter.

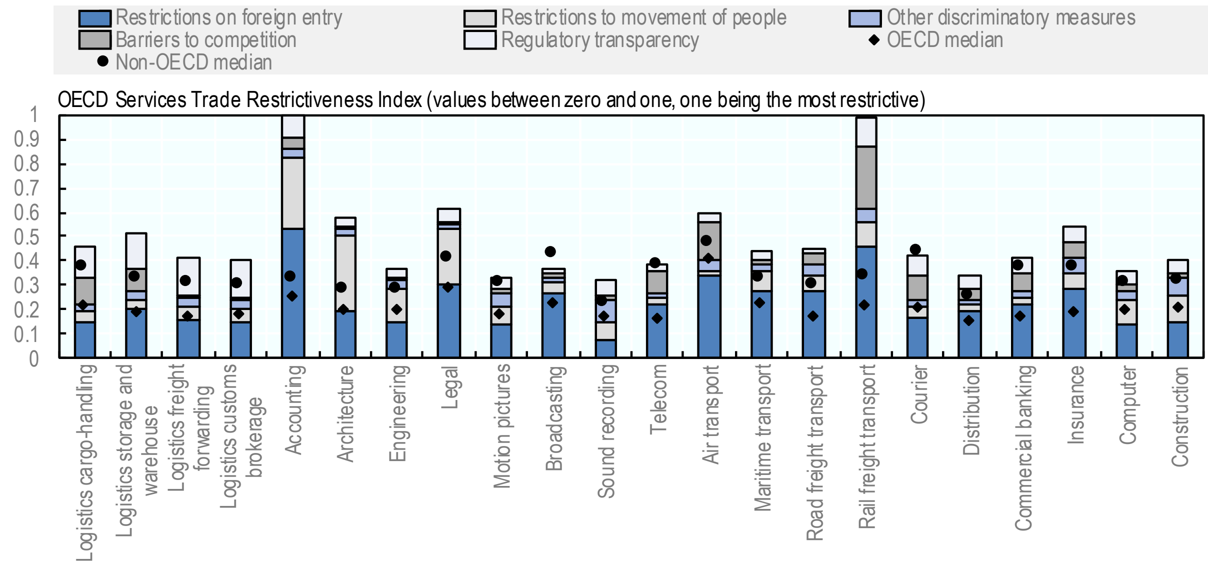
Nonetheless, it is important to note that Thailand also maintains a fairly stringent regulatory regime in respect to a number of other policy dimensions important for services development beyond restrictions on foreign entry, such as measures related to the movement of people, barriers to competition (see Chapter 7), regulatory transparency and other discriminatory measures that affect the ease of doing business as captured in the OECD *Services Trade Restrictiveness Index* (Figure 6.6). In almost all 22 services sectors assessed by the indicator, Thailand appears as more restrictive than the average of OECD and non-OECD economies covered. And while restrictions on foreign entry are particularly important, the level of restrictiveness observed in the other policy dimensions assessed is also considerable.

Figure 6.5. OECD FDI Regulatory Restrictiveness Index, by sector: Thailand vs. ASEAN vs. OECD, 2019



Note: See note to Figure 6.3 above.
Source: *OECD* FDI Regulatory Restrictiveness Index database, http://www.oecd.org/investment/fdiindex.htm; See also the ASEAN FDI Regulatory Restrictions Database for information on the underlying measures captured in the Index, https://qdd.oecd.org/subject.aspx?Subject=ASEAN_INDEX.

Figure 6.6. OECD Services Trade Restrictiveness Index, by sector and policy area, 2019



Note: The STRI indices take values between zero and one, one being the most restrictive. They are calculated on the basis of the STRI regulatory database which contains information on regulation for the 36 OECD Members, Brazil, China, Colombia, Costa Rica India, Indonesia, Malaysia, Russia, South Africa, and Thailand. The STRI database records measures on a Most Favoured Nations basis. Preferential trade agreements are not taken into account. Air transport and road freight cover only commercial establishment (with accompanying movement of people).
Source: OECD Services Trade Restrictiveness Index, http://oe.cd/stri.

Foreign equity restrictions dominate barriers to FDI worldwide, but FDI screening and other operational measures are much more prevalent in Thailand

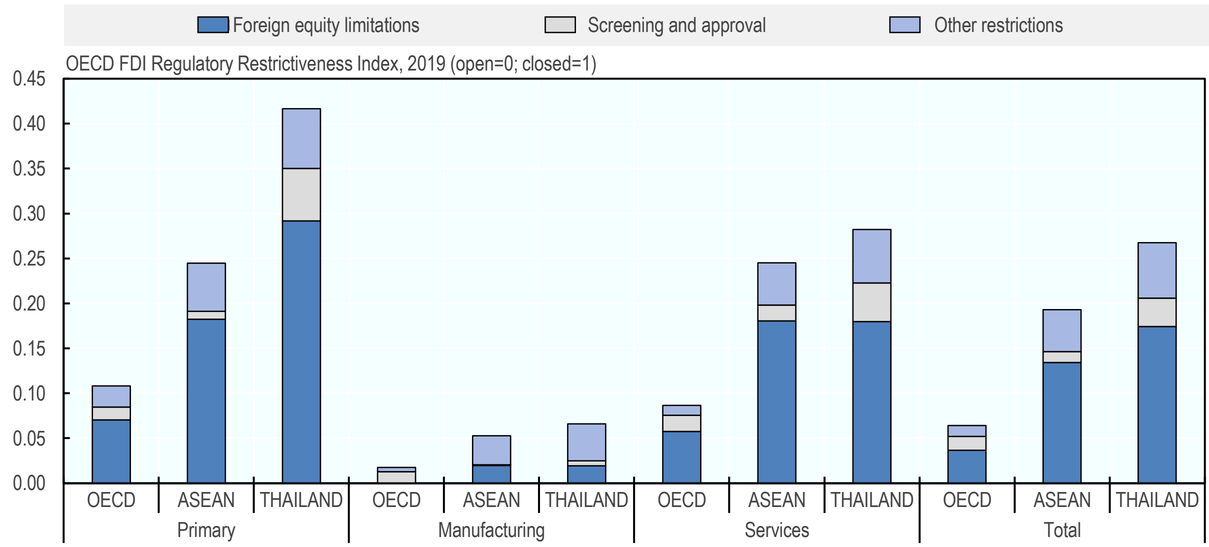
Foreign shareholding restrictions are considered a more important barrier to FDI in the OECD FDI Regulatory Restrictiveness Index than are other restrictions covered by the indicator, such as foreign investment approval mechanisms, restrictions on the employment of key foreign personnel and other operational restrictions. Hence, their weight is greater in the *Index* methodology (see Kalinova *et al*., 2010).

This partly explains why foreign equity restrictions dominate in terms of barriers to FDI in Thailand and elsewhere. However, the extent to which this is the case in the aggregate, is largely driven by their scope of application, both across and within sectors. In the former case, this is determined by how prevalent foreign equity restrictions are in the 22 sectors covered in the *Index;* in the latter, by how stringent these restrictions are. The *Index* methodology distinguishes three thresholds in this respect: if foreign investors are fully prohibited from investing in the sector, if they are allowed to hold only a minority participation in companies operating in the sector, or if they are only restricted from establishing a wholly-owned operation.

As seen in Figure 6.7, Thailand's FDI regime is relatively more stringent in terms of foreign equity limitations in primary sectors than elsewhere. In manufacturing and services, the incidence of foreign equity restrictions is on average on a par with the average ASEAN economy, although it is still much higher than observed in OECD economies. The result is reflective of foreign equity limitations contemplated in both the FBA and other sector-specific legislation (see Annex 5.A and Table 6.1 below).

The prevalence of foreign investment approvals across almost all service sectors as per the FBA is a somewhat more distinctive feature of Thailand's FDI regime, as is the incidence of Thai nationality requirements for corporate board members in a number of sectors. This explains to a large extent the result in Figure 6.7.

Figure 6.7. OECD FDI Regulatory Restrictiveness Index, by type of restriction, 2019



Note: See note to Figure 6.3 above. Other restrictions groups together restrictions on key foreign personnel and other operational measures.
Source: *OECD* FDI Regulatory Restrictiveness Index database, http://www.oecd.org/investment/fdiindex.htm; See also the ASEAN FDI Regulatory Restrictions Database for information on the underlying measures captured in the Index, https://qdd.oecd.org/subject.aspx?Subject=ASEAN_INDEX.

The FBA requires foreign investors to obtain approval from the Council of Ministers to hold absolute majority shareholding stakes, limited to a maximum of 75%, in businesses in List Two (see Annex 5.A). Foreign investors are equally required to obtain an approval from the Foreign Business Commission (FBC) to hold absolute majority shareholding stakes without limitation in businesses in List Three, which includes most service activities, except for domestic transport services covered under List Two and some financial activities, which are typically restricted to foreign investors through sectoral regulation (see Annex 5.A). Until early 2019, even intra-group services provided to affiliates in Thailand, such as consultation on management, marketing, human resources and information technology, as well as lending money and renting out office space to affiliated and group companies in Thailand, were captured by List Three.[1]

Table 6.1. FDI Restrictions under sector-specific or horizontal legislation

Scope of application (sectoral or horizontal)	**Brief description of the measure**	**Legal authority / official source**
Horizontal	Foreign investors (foreign shareholding above 50%) are prohibited from holding ownership titles to land but may obtain land on a leasehold basis. An exception may be granted to foreigners who bring in capital in excess of THB 40 million. Such investors may be authorised to buy up to 400sqm of land within designated areas, notably Bangkok, the city of Pattaya and defined residential areas.	Act Promulgating the Land Code B.E. 2497 (1954), as amended Urban Planning Act B.E. 2562 (2019)
Real Estate Investment	Ownership by majority-foreign owned investors (above 50% of voting capital) of commercial or residential real estate is limited to 49% of the total area of all units in the condominium.	Condominium Act B.E. 2522 (1979), as amended
Media - radio and TV broadcasting	Foreign investment in radio & TV broadcasting is limited to 25% of the total voting capital and three-fourths of the board of directors must be Thai citizens.	Broadcasting and Television Businesses Act, B.E. 2551 (2008), as amended
Media - printed media	Foreign investment in printed media (press) is limited to 30% of the total voting capital, and three-fourths of the board of directors must be Thai citizens.	Printing Recordation Act, B.E. 2550 (2007), as amended

Scope of application (sectoral or horizontal)	**Brief description of the measure**	**Legal authority / official source**
Air transport	Foreign investment in scheduled and non-scheduled air services, as well as other air commercial services, is limited to 49% of the total voting capital, and two-thirds of the board of directors and the manager or the person having the power to manage must be Thai citizens.	Notification of Ministry of Transport Re: Rules and Conditions on Granting the Permission to Operate Trading Business in Air Navigation B.E. 2559 (2016)
Tourism	Foreign investment in tourism business (essentially travel agencies and tour operator services) are limited to up to 49% of voting capital, and more than 50% of directors must be Thai.	Tourism Business and Guide Act, B.E. 2551 (2008), as amended
Financial Institutions	Foreign shareholding in commercial banking, finance business and credit foncier business is limited up to 49% of the total voting capital, but can be higher if necessary for strengthening the stability of a financial institution or the stability of the financial institution system. The majority of the board of directors must be Thai citizens.	Financial Institutions Business Act B.E. 2551 (2008), as amended
Insurance	Foreign shareholding in insurance activities is limited up to 25% of total voting capital and not less than three-fourths of the total number of its directors must be Thai nationals. Foreign shareholding in excess of the limitations established by law is possible on an exceptional basis subject to authorisation from the Ministry of Finance.	Life Insurance Act, B.E. 2535 (1992), as amended Non-Life Insurance Act, B.E. 2535 (1992), as amended
Financial securities	Foreign investment in securities business is subject to local incorporation	Securities and Exchange Act B.E.2535 (1992) as amended
Telecom	Foreign investment in telecommunication business, with the exception of Type 1 licensed business - which includes essentially service-based telecommunications providers, such as internet access service, audio text service, resale of public switched telecommunications service, store-and-retrieve value-added service and international calling card service - is limited to 49% of the voting capital.	Telecommunications Act, B.E. 2544 (2001), as amended

In granting permission to foreigners for the operation of businesses under the FBA, the FBC and the Council of Ministers shall consider 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, natural resources conservation, energy, environmental preservation, consumer protection, sizes of undertakings, employment, technology transfer and research and development.

The practice of screening foreign investment based on economic development matters was once common, including in OECD countries, but is now the exception to the rule and often circumscribed in scope (e.g. applying only to strategic industries for instance). While 30 years ago, about 70% of the OECD countries screened FDI projects, now fewer than one in six still do (Mistura and Thomsen, 2017). Screening measures which are exclusively for considerations of public order and essential national security are not considered in the OECD FDI Regulatory Restrictiveness Index.

It is hard to measure how much FDI screening policies act as a deterrent to FDI, because policy design and implementation aspects vary greatly across countries using such policies, but FDI screening measures as captured by the OECD FDI Regulatory Restrictiveness Index are found to significantly deter FDI on average (Mistura and Roulet, 2019).

In Thailand, the FBA endows the Minister of Commerce with ample powers to impose conditions for granting Foreign Business Licences to majority-owned foreign investments in List Two and Three (see Annex 5.A), including for instance in relation to (1) the ratio of the capital to loans for the operation of permitted businesses; (2) the number of foreign directors who must have a domicile or residence in the Kingdom; (3) the amount of, and the period of time for maintaining, the minimum capital in the country; (4) technology or property; (5) other necessary conditions.

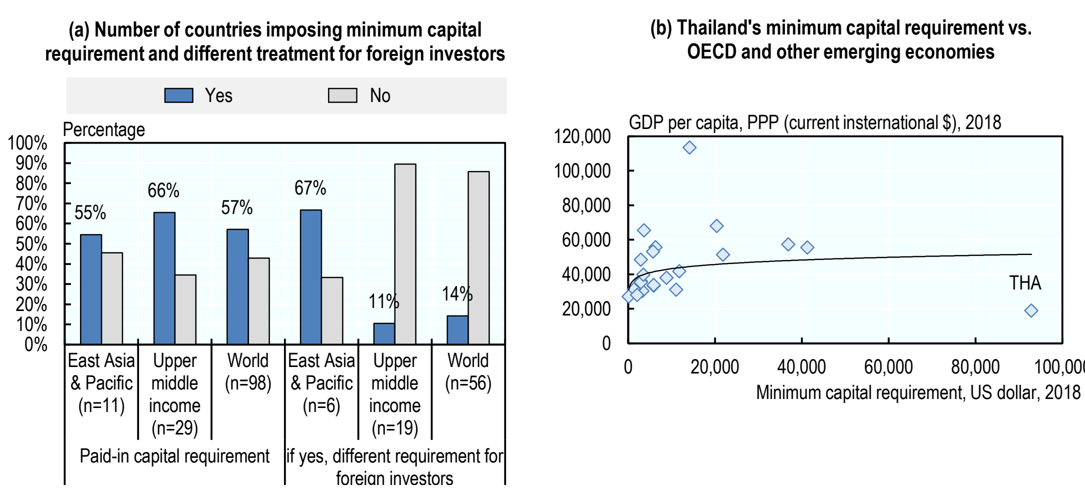
Various criteria are used to consider the impact of the proposed business operation, such as the advantages and disadvantages to the nation's safety and security, economic and social development, size of the enterprise, local employment, etc. Approval of a business license application is more likely when the authorities view the business as providing significantly more benefits and protect and promote Thai interests. Thus, for some investors, "The Foreign Business License application is a complicated long process." (Siam-legal, 2019).

The FBA also imposes Thai nationality requirements for boards of directors of companies operating in sectors included in its List Two. Restrictions on the employment of foreign persons for key managerial positions and boards of directors are rarely used by other countries covered in the *Index*. Somewhat more frequent is the use of residency requirements when addressing governments' aspirations of facilitating local learning and securing jobs for local skilled workers. Residency requirements are not considered a restriction under the OECD FDI Regulatory Restrictiveness Index.

Also unusual is the different level of minimum capital required for foreign and domestic investors to start a general business in Thailand. Only a few countries discriminate between domestic and foreign investors in this respect (Figure 6.8a). According to the World Bank's Investing across Borders database, across all regions only eight countries (out of the 98 covered) discriminate between foreign and domestic investors in this regard, four of which are in the East Asia and Pacific region. In fact, the use of minimum capital requirements for general business activities[2], whether or not discriminatory, has declined considerably over the past decade. According to the World Bank (2014), 39 economies eliminated capital requirements in the preceding seven years, and many others never had them in the first place. Despite this, minimum capital requirements remain a reality in many countries. Out of 190 economies included in the World Bank's Doing Business 2020, 56 economies still required a minimum amount of capital to be paid-in by investors to register a business (World Bank, 2020).

Where minimum capital requirements still exist, the amount required is typically much lower than what is required for foreign investors in Thailand. This is the case even across economies with a level of income per capita much greater than that of Thailand (Figure 6.8b). The minimum capital requirement of not less than THB 2 million for a foreigner to be allowed to establish operations in Thailand, or not less than THB 3 million in the case of activities under List Two of Three of the FBA, clearly puts Thailand as an outlier in this respect. The comparison is based on minimum capital required for limited liability companies, but it would also hold true in relation to capital required from public stock companies in the observed countries.

Figure 6.8. Thailand's minimum capital requirement policy in international comparison



Note: Data in Figure 6.7b refer to minimum capital requirement for limited liability companies and was converted at the 2018 yearly average exchange rate. In addition to Thailand, the figure covers another 25 OECD and large emerging economies applying minimum capital requirements for the establishment of limited liability companies as reported in the OECD Services Trade Restrictiveness database.
Source: World Bank's Investing Across Borders database (Panel a); OECD Services Trade Restrictiveness database, IMF International Financial Statistics and World Bank's World Development Indicators (Panel b).

Thailand could also improve access to land and public procurement for foreign investors. With few exceptions, foreign majority-owned investors are prohibited from holding ownership title to land in Thailand. They are only entitled to lease land up to 50 years, renewable for another 50 years. While this is not unusual elsewhere, the regime in Thailand is somewhat more stringent than typically the case. Most often, discriminatory measures concerning foreign ownership of land, if applied, tend to circumscribed to legal entities established abroad. Locally incorporated companies, regardless of their foreign ownership levels, are often accorded national treatment, especially if the land is required for business purposes.

Unlike most countries, Thailand also gives preferential treatment to majority Thai-owned companies meeting the criteria for entering the “Thai Innovation List”, a list of novel products and services invented by majority Thai-owned companies. The eligible firms benefit from simplified procurement procedures under special procurement method and a market reservation policy which requires all government agencies to source up to 30% of their demand for goods and services featuring in the list from the listed firms.

Regulatory reviews are frequently conducted but could be improved with an adequate structure and technical support

The right of governments to favour some investors over others in order to achieve social, economic or environmental goals is widely accepted, but any policy that favours some firms over others may involve costs in terms of less competition and hence lower firm-level efficiency. Discriminatory measures will therefore only serve the broader public interest to the extent that their potential costs are compensated by broader economic and social benefits. For this reason, they need to be constantly re-evaluated to determine whether their original motivation remains valid, supported by an evaluation of the costs and benefits, including an assessment of the proportionality of the measure to ensure they are not greater than needed to address specific concerns (OECD, 2015a).

The FBA appropriately provides for regular revisions of its lists of restricted activities by the Foreign Business Commission (FBC), which is composed by representatives of various ministries and government bodies, including from the Office of the National Economic and Social Development Council, the Board of Investment and Consumer Protection Board among other government agencies. The three Thai chambers of commerce, namely the Thai Chamber of Commerce, the Federation of Thai Industries and the Thai Bankers’ Association, are also represented.

The current institutional setting, however, would benefit from a more balanced representation of interest groups. For instance, the participation of consumers (e.g. through the Office of the Trade Competition Commission, see Chapter 7 for a discussion on Thailand’s competition framework), academia and civil society, could be contemplated, although the Minister of Commerce may appoint another five qualified persons to be members of the commission. Foreign Chambers of Commerce are also not represented. A more balanced representation could help to broaden the information-base supporting discussions and deliberations and provide some counterbalance to positions held by well represented domestic business groups.

The FBC deliberates on matters related to its annual mandate by assessing the impact on competitiveness of national investors and proposing revisions to the lists of restricted activities for foreign investors with regard to the impact of liberalisation. The Department of Business Development of the Ministry of Commerce is responsible, under the auspices of the commission, for conducting such a revision at least once annually. The revision must take into account the readiness of Thai businesses to compete with foreigners, comments from concerned line authorities, and overall advantages or disadvantages of removing activities from the lists of restricted businesses under the FBA. The extent to which technical assessments are prepared to support deliberations, for example, is not clear, nor if any policy externalities are considered beyond impact on Thai businesses. If there have been studies, these have not been publicly disclosed. In contrast, the Commission has a much more structured process for making recommendations concerning specific projects requiring approval under FBA. A positive note in this regard is that the FBC acknowledged in its 2018 Annual Report the need for a more structured approach for issuing recommendations concerning revisions of business categories which remain listed in the FBA (FBC, 2019).

The government may also wish to ensure that announcements of liberalisation measures through changes to the FBA are codified in the underlying sector-specific regulations where restrictions sometimes remain unchanged. These regulations prevail over the FBA. Beyond the frustration that such discrepancies might generate in the business community, they also contribute to undermining one of the most positive aspects of the FBA, which is to bring all the restrictions pertaining specifically to foreign investors under one umbrella, as a kind of negative list for foreign investors. For legibility purposes, and to avoid further regulatory fragmentation, the government could consider revising the FBA to reflect better the restrictions found in other legislation.

Further clarity with regards to the scope of application of activities listed in the FBA would also be useful. The current list makes no reference to any standard industrial classification, which renders the coverage of listed business activities somewhat uncertain. In this respect, the government may want to adopt a standard classification for listing or excluding industries and business activities from the FBA. This could be done by making explicit reference to Thailand's Standard Industrial Classification which has the advantage of conforming to the International Standard Industrial Classification (ISIC Rev 4).

Exemption schemes and legal loopholes under the Foreign Business Act

Thailand has been in practice more open than suggested by its statutory regime due to exemption schemes offering flexibility for foreign investors vis-à-vis restrictive activities under the FBA. The policy flexibility achieved with the exemption schemes is praised by the Department of Business Development as the authority judges them appropriate for adapting the FDI policy to evolving social and economic circumstances. But the regulatory uncertainty associated with some of the available channels used by investors is likely to come with costs since some foreign investors could explore legal loopholes into restrictive activities and sometimes by illegal means (discussed further below).

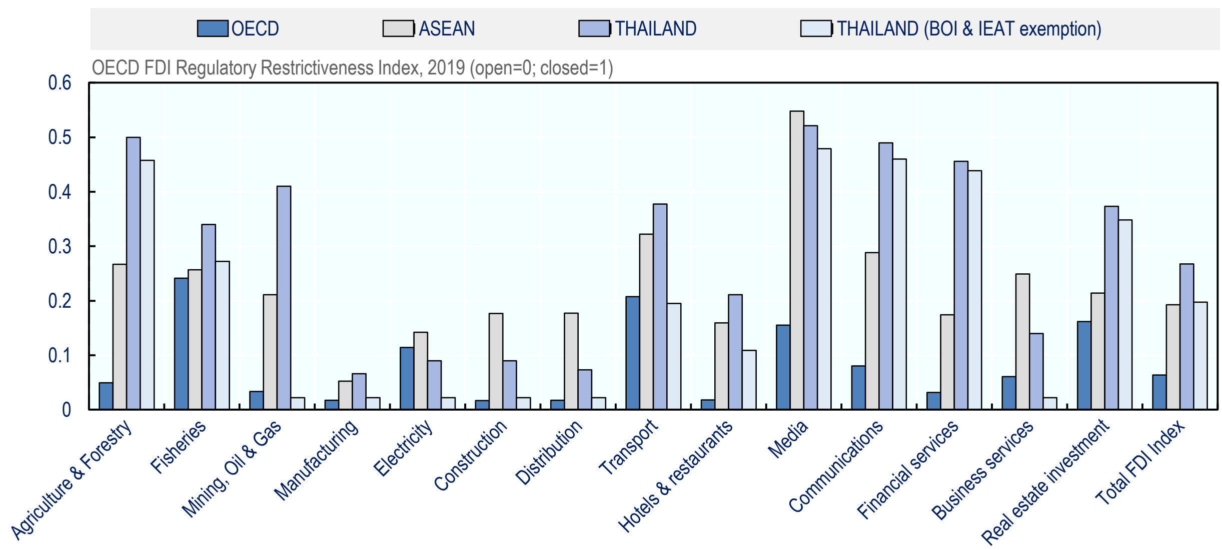
Exemption scheme for promoted activities

The FBA provides some flexibility for the authorities to selectively exempt some investments from the application of its provisions restricting foreign investment in businesses included in Lists Two and Three of the act. This is typically the case for promoted investors under the Law on Investment Promotion or those granted written permission for carrying out industrial or export-oriented activities under the Law on the Industrial Estate Authority of Thailand or under other laws.

In such cases, foreign investors can be exempted from the approval requirement and equity limitation for businesses under List Two and the approval requirement for businesses in List Three. The promotion exemption scheme relates only to provisions of the FBA and does not give investors the right to by-pass any restriction stipulated in other legislation (Table 6.1). Another loophole of the FBA discussed further below – the possible use of preferential shares or indirect structures to circumvent restrictions – is also not an option for by-passing foreign equity restrictions stipulated elsewhere because these legislations typically limit the share of voting capital that can be held by foreigners.

If, for instance, the exemptions allowed under the promotion exemption schemes were fully taken into consideration by the OECD FDI Regulatory Restrictiveness Index, Thailand's level of FDI restrictiveness would be equivalent to that of Lao PDR. In many sectors, restrictions would be drastically reduced to levels much below that observed in the average ASEAN economy, but the overall level of restrictiveness incorporated in legislation taking precedence over the FBA and in the List One of the FBA which cannot be circumvented remains, nonetheless, considerable (Figure 6.9). This is the case, for instance, in the media sector where the sectoral legislation imposes a 25% foreign shareholding limitation in TV and radio broadcasting companies. In such cases, any difference in scores is due to changes in the scores of horizontal measures impinging on all sectors and which can be modified under the exemption scheme (e.g. the minimum capital requirement).

Figure 6.9. OECD FDI Regulatory Restrictiveness Index, by sector, 2019: simulating BOI and IEAT exemptions



Note: See note to Figure 6.3 above. The ASEAN average does not reflect Thailand's simulated score considering the investment promotion exemptions schemes under the FBA.
Source: OECD FDI Regulatory Restrictiveness Index database, http://www.oecd.org/investment/fdiindex.htm; See also the ASEAN FDI Regulatory Restrictions Database for information on the underlying measures captured in the Index, https://qdd.oecd.org/subject.aspx?Subject=ASEAN_INDEX..

In 2018 alone, out of 846 foreign projects applying for business permissions under the FBA (including Foreign Business Licences and Certificates altogether), 468 (55%) were exempted from FBA approvals (licensing system) through the investment promotion exemption scheme (FBC, 2019). Exempted investors are issued an automatic Foreign Business Certificate instead. Between March 2000 and end-November 2019, 4 639 certificates were issued under the investment promotion exemption scheme, compared to 5 548 licences (Table 6.2).

The "dual track" approach provides investors the choice of gaining approval either via the FBA or the Investment Promotion Act. This could give rise to questions about the coherence and appropriateness of related policies. Maintaining a dual approach could be perceived as a mixed, if not negative, signal to investors and could undermine the effectiveness of promotion activities (see Chapter 5 for a discussion on promotion policies).

Table 6.2. Number of Foreign Business Licences and Certificates issued under the FBA 1999 (30 March 2000 – 30 November 2019)

	(A) Licences Issued under FBA 1999	(B) Foreign Business Certificate Issued under FBA 1999	**Exemption Schemes**[3]			
			Treaty of Amity and Economic Relations (Thailand & USA)	Thailand - Australia FTA	Japan-Thailand EPA	Promoted under the Investment Promotion Law (BOI & IEAT)[4]
Service Business[1]	2642	3434	668	1	3	2762
Representative Office / Regional Office	1481	n/a	n/a	n/a	n/a	n/a
Engineering Service and Construction	609	599	72	0	0	527
Broker or Agent Business, Retailing and Wholesaling Business	581	2045	821	0	0	1224
Accounting Service Business and Legal Service Business	176	78	72	0	0	6
Other Businesses[2]	59	340	220	0	0	120
Total	**5548**	**6496**	**1853**	**1**	**3**	**4639**
Share in Total (A+B)	46%	54%				

Notes: Foreign Business Licences are issued to foreign investors approved by the relevant authorities under the FBA procedures to carry out business in Lists Two and Three of the act. A Foreign Business Certificate is the automatic permission issued to a foreigner exempted from FBA restrictions as per the exemption schemes provided for in the FBA.
1. Other service businesses under List 3(21) of FBA e.g. lending to affiliate, rental service, leasing, hire purchasing, repair of products in particular brand, made-to-order service of mold & auto parts.
2. Other businesses e.g. auctioning, advertising business, architecture service business, hotel business, guided tour, selling food or beverages.
3. Data on Foreign business Certificates related to regional operating headquarters (ROH) is included under 'service business'.
4. BOI and IEAT refer to the Board of Investment and the Industrial Estate Authority of Thailand, respectively.
Source: Department of Business Development, Foreign Business Operation Statistics: https://www.dbd.go.th/more_news.php?cid=197.

As mentioned above, there were 468 Foreign Business Certificates issued under the investment promotion exemption scheme in 2018, of which 441 were privileged under the Law on Investment Promotion and 27 were granted by the operation of the Law on the Industrial Estate Authority of Thailand. In the same period, the Board of Investments (BOI) approved a total of 914 projects with foreign participation, hence roughly half of them in sectors restricted under the FBA. The share of BOI promoted projects exempted from FBA restrictions has varied considerably in the past but has generally been very high (Table 6.3).

Table 6.3. Proportion of BOI-promoted projects with foreign participation and FBA exemptions through the promotion channel

	(A) Total number of projects granted a Foreign Business Certificate through the investment promotion exemption scheme of the FBA (only BOI)	(B) Total number of projects with foreign participation promoted by the BOI	Share (A/B)
2018	441	914	48%
2017	437	730	60%
2016	536	625	86%
2015	319	1151	28%

Source: Foreign Business Commission (2019, 2018, 2017 and 2016) and BOI statistics (see Chapter 5).

The large number of exemptions also raises the question of whether the FBA has been considered excessively restrictive by the authorities themselves. The observed practice can be seen as an endorsement of the view that the FBA is too restrictive in the current economic context. Certainly, the exemption channel offers the authorities more flexibility to selectively admit foreign investors and negotiate the conditions under which they are allowed (FBA Licence negotiations are still bound by limits established in the law, such as the maximum foreign shareholding of up to 75% for business activities in List Two), but this may come at a cost to the economy (see discussion of unintended consequences of FDI restrictions below).

Exemption scheme for investments under treaties or international agreements

Foreigners operating businesses specified in the Lists One, Two and Three of the FBA may be exempted from the associated restrictions as a result of preferential treatment accorded to them under treaties to which Thailand is a party. This exemption scheme, for instance, was used 1 857 times over the period from March 2000 to end-November 2019, corresponding to 15% of all Foreign Business Licences and Certificates issued under the FBA in the period (Table 6.2).

The Treaty of Amity and Economic Relations between Thailand and the United States concluded in 1966 is the most relevant one in this respect because it comprehensively exempts US investors from all applicable restrictions since the treaty first entered into force, except in telecommunications, transport, banking, natural resources extraction, business which takes care of property for the benefit of others and domestic local agricultural products trading. Investors from only two other countries, Japan and Australia, have reportedly used privileged conditions under treaties with Thailand to avoid FBA restrictions.

Legal loopholes associated with the use of preferential shares and indirect holdings

The alternative of investing under a minority foreign shareholding to qualify as a Thai company and avoid having to obtain an FBA licence may not be acceptable to some investors, especially if they cannot find a suitable local partner with adequate expertise and capacity. For some, the challenge may be more related to having to relinquish a majority controlling stake in the venture rather than sharing the rents with Thai shareholders. Some foreign investors may be reluctant, for instance, to share internal company documents and discussions with the Thai shareholders.

In such situations, some investors have explored existing legal loopholes to circumvent the restrictions in the FBA. A common strategy has been to use preferential share structures in order to qualify as a Thai company and avoid FBA restrictions. As in many countries, Thailand's corporate legislation allows a private limited company to issue shares with differential rights. Typically in this case, the Thai shareholders will hold 'preference shares' which entitle them to a fixed dividend and priority over 'ordinary' foreign shareholders in the payment of dividends and upon liquidation. In turn, preferential Thai shareholders have no or reduced voting rights.

Since the definition of 'foreigner' under the FBA only takes into consideration the investors' capital contribution and not their level of control and managerial influence[3], the use of preference shares allow foreign investors to have control over a company while maintaining the status of a Thai company and complying with the FBA. The Thai shareholder needs only to contribute not less than 51% of the capital of the company, but it does not need to hold profit rights and voting power in the same proportion. This can be done, for instance, by entitling foreign common shareholders with voting rights in the proportion of 10 votes per unit of share in the company, against one vote per unit of share for Thai preferential shareholders. Although some may consider that this practice goes against the underlying principle of the FBA, it has not been judicially challenged so far.

Another common strategy used by foreign investors to by-pass the FBA is to explore indirect ownership structures. The FBA takes into account only direct holdings to determine the nationality of a company. As such, foreigners can make use of indirect holding structures to obtain control over a Thai company. For instance, a foreign investor may acquire a minority participation in a Thai holding company and a minority participation in one of its investees, all qualified as Thai companies under the FBA because direct foreign shareholding does not excess the legal threshold. Indirectly, however, the foreign shareholder may hold a majority controlling stake in the Thai investee company. Indirect holding is said to be a common practice in business services. To ensure transparency of ownership structures and thus lower or eliminate the risk of by-passing the FBA, listed companies in Thailand are required to disclose ultimate shareholders under the Securities and Exchange Act. These rules apply for companies applying for Initial Public Offering ("potential issuers") and companies already listed on Thailand's stock exchange ("listed companies").

The use of nominee structures, albeit explicitly illegal and subject to criminal charges, have also sometimes been used by foreign investors to circumvent the FBA as it is rather simple and less expensive. In its most obvious form, it consists of having a Thai shareholder holding shares on behalf of a foreigner, for instance through share transfer or share pledge agreements, although various other instruments can also be potentially used for such purposes.

The prevalence of nominee structures is difficult to ascertain because of the challenges in identifying them, but a recent government investigation on the practice of illegal nominee shareholding to circumvent the FBA in three target sectors – tourism and tourism-related business, land and immovable property trading, and agricultural business – have pointed to a limited use of such structures. According to the reported information, out of 6 380 Thai juristic entities with foreign shareholding of less than 50% investigated, about 98% of them showed no suspicious conduct of nominee shareholding. In most of the remaining cases (2%), the entities failed to provide the required information to the authorities within the imposed timeframe (FBC, 2019). The applied methodology used was not reported, but the results seem to contrast sharply with businesses' general perception about the prevalence of such structures and some recent government statements and initiatives in this respect.[4]

The government is vigilant and committed to monitoring the recourse to such illegal practices, despite the difficulties in implementation, and the investigation process is said to be transparent and non-discriminatory. In addition to the monitoring exercise carried out by the Department of Business Development of the Ministry of Commerce referred to above, the Ministry of Tourism and Sports has also reviewed the issue of nominees in the tourist industry. The committee created for such purposes has been dissolved following the completion of the exercise. The Securities and Exchange Commission also requires listed companies to disclose the list of top 10 shareholders in their annual reports, which limits considerably the use of nominee structures in listed companies.

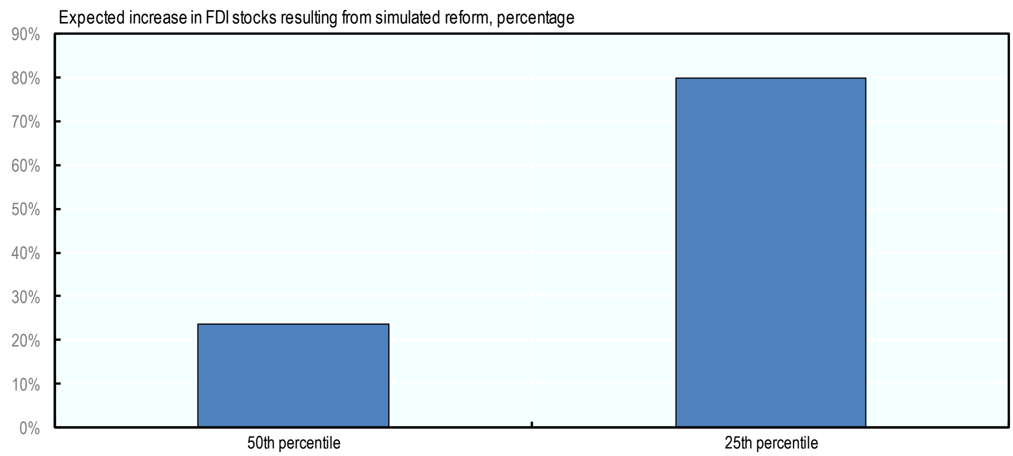
Potential implications of FDI restrictions

The empirical literature suggests a number of potential costs associated with discriminatory policies against FDI. The most obvious is that statutory restrictions are found to have a significant negative effect on a country's ability to attract FDI. While it is evident that when foreign investment is prohibited an economy is expected to receive no such investment, the evidence suggests that even partial restrictions, such as foreign equity limitations and discriminatory screening and approval mechanisms, can have a significant impact on FDI (Mistura and Roulet, 2019; Fournier, 2015; Nicoletti et al., 2003).

In this respect, recent OECD research estimated that the introduction of reforms leading to a 10% reduction in the level of FDI restrictiveness, as measured by the OECD FDI Regulatory Restrictiveness Index, could increase bilateral FDI inward stocks by around 2.1% on average across countries (Mistura and Roulet, 2019). The effect is larger for FDI in services sectors, reflecting the greater incidence of restrictions in these sectors. But even FDI into manufacturing sectors, which are mostly open to FDI, is also negatively affected by an economy's overall restrictiveness level, despite it being typically driven by restrictions in services activities.

For Thailand, an illustrative simulation exercise using the average elasticity obtained in Mistura and Roulet (2019) suggests that if Thailand were to reduce restrictions to the 50th and 25th percentile levels of OECD FDI Regulatory Restrictiveness Index, inward FDI stocks could be 25% to 80% higher, respectively (Figure 6.10).

Figure 6.10. Simulated effects of FDI liberalisation: reducing Thailand's restrictions to the 50th and 25th percentile levels of OECD FDI Regulatory Restrictiveness Index



Note: The simulation is based on the direct partial elasticity of FDI to restrictions (as measured by the OECD FDI Regulatory Restrictiveness Index), estimated using an augmented gravity model of bilateral inward FDI positions using a poisson pseudo-maximum likelihood estimator. Typical gravity variables and a series of other policy and non-policy factors are included (distance, contiguity, the existence of a common language, colonial ties, market size, economic growth, real exchange rates, similarity in size and factor resource endowments, trade openness, natural resource endowments, institutional maturity, FDI restrictions, participation in free trade areas, corporate tax), as well as host and home country and time-fixed effects. The regressions cover bilateral FDI relationships between 60 countries over the 1997-2012 period. Simulated effects assume the average elasticity effect applies.
Source: author's elaboration based on Mistura and Roulet's (2019) baseline estimations.

More importantly, restrictive services regulations typically enable services providers to charge higher mark-ups in a majority of service sectors, affecting downstream activities and end-consumers (Rouzet and Spinelli, 2016). This has economy-wide productivity implications given the increased importance of services as inputs for downstream manufacturing industries (Box 6.2). Previous OECD (2019) work, for instance, demonstrates that ASEAN manufacturing firms in industries relying extensively on services, such as in machinery and transport equipment industries, would greatly benefit from further services liberalisation. Likewise, SMEs have relatively more to gain from such measures than large firms. This is equally true for domestic firms as opposed to foreign-owned firms and for firms that do not export compared to exporters.

Service sector reforms could also translate into significant economic gains in the long-run. The IMF (2018) estimates that Thailand's potential long-term real GDP gain from reducing trade and FDI restrictions to the global average amount to roughly 17% in the medium-to-long term. Nearly 5 percentage points is attributable to FDI liberalisation in the estimation.

Overall, even if restrictions may not deter some investments altogether, they might affect the very nature of the FDI coming to Thailand, possibly towards a more capital light type of investment in order to conform with some of the potential drawbacks of investing jointly with local equity partners (e.g. lack of suitable partners in terms of capital and expertise, technology leakage etc.) or towards a less transparent type of investment that may be more tolerant of using riskier business structures to by-pass the legislation as discussed above.

Box 6.2. Services reforms raise manufacturing productivity

Recent empirical literature has identified a clear association between services reforms and productivity growth in the economy as a whole; as well as specifically in manufacturing (Low, 2016). A study of 15 OECD countries illustrates that anti-competitive upstream regulations in services and other non-manufacturing sectors curbed multi-factor productivity growth in downstream sectors between 1985 and 2007 (Bourlès et al., 2010). A recent study of Lao PDR confirms that services liberalisation benefits economic development across economic sectors, not just in services (Isono and Ishido, 2016).

Focusing on manufacturing, Duggan et al. (2013) employ the OECD FDI Index to assess the effects of FDI restrictions in services on the manufacturing productivity of Indonesian firms and find that service sector FDI liberalisation accounted for 8% of the observed increase in Indonesian manufacturers' total factor productivity (TFP) from 1997 to 2009. Shepotylo and Vakhitov (2015) analyse the impact of services liberalisation on manufacturing productivity in Ukraine over 2001-07 and find that a one standard deviation in liberalisation in services is associated with a 9% increase in the TFP of manufacturing firms. The authors also find that the effect of services liberalisation is stronger for domestic and small firms. Arnold et al. (2012) find that India's policy reforms in banking, telecommunications, insurance and transport services all had significant and positive effects on the productivity of Indian manufacturing firms from 1993 to 2005. Both foreign and domestic firms benefited from services reforms, but the effects were stronger for foreign-owned firms. A one standard deviation increase in services liberalisation resulted in a productivity increase of approximately 12% and 13% for domestic and foreign manufacturing firms, respectively. Relatedly, Berulava (2011) finds that liberalisation in telecommunications, electric power, transport, water distribution and banking stimulated the expansion of export activities of manufacturers in 29 transition economies from 2002 to 2009.

These findings are qualified by a recent study that argues that the effect of restrictions in upstream services is conditional on institutional quality (Beverelli et al., 2015). Using sector-level data in a panel dataset of 58 countries spanning all stages of economic development, the study finds that countries with better economic governance benefit more from open services policies. That is, higher quality institutions attract more productive service providers and support higher levels of services performance, which then affect downstream manufacturing sectors.

A number of studies also show a positive association between FDI in services and manufacturing productivity. Arnold et al. (2011) illustrate that increased foreign participation in services improved manufacturing productivity in the Czech Republic from 1998 to 2003. A one standard deviation in foreign presence in services is associated with an approximately 8% increase in the productivity of Czech manufacturing firms relying on services inputs. Fernandes and Paunov (2012) conduct a similar study on the effects of FDI in services sectors on the productivity of Chilean manufacturing firms between 1995 and 2004. A one standard deviation increase in service FDI would increase Chilean firms' TFP by 3%, and forward linkages from FDI in services explain 7% of the observed increase in the TFP of Chile's manufacturing firms during the period. Forlani (2012) finds that increased competition in network services in France improves the productivity of manufacturing firms.

Source: reproduced from OECD (2019)

This does not mean that FDI restrictions should necessarily be discarded entirely, as they may be appropriate in some circumstances. Many countries still find them useful to address concerns of national security, for instance. Instead, the evidence above reinforces the importance of weighing their benefits against their costs on a regular basis and in light of the country context and circumstances to derive a conclusion of whether they remain beneficial to society at large.

For Thailand, such an exercise seems particularly timely and appropriate considering its ambition to become a high-end services and high-tech manufacturing economy as envisioned in the 20-Year National Development Strategy and in the Thailand 4.0 initiative. As indicated previously, for almost 50 years Thai services providers have largely been insulated from foreign competition and indirectly privileged over domestic manufacturers and consumers. Yet, it is questionable whether this policy has paid off (see Chapter 3) or is appropriate for delivering on Thailand's development goals going forward.

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Annex 6.A. Lists of restricted activities under the Foreign Business Act, B.E. 2542 (1999)

List One
BUSINESSES STRICTO SENSU NOT PERMISSIBLE TO FOREIGNERS BY SPECIAL REASON
(1) The Press, radio broadcasting station or radio and television station business (2) Rice farming, plantation or crop growing (3) Livestock farming (4) Forestry and timber processing from a natural forest (5) Fishery, only in respect of the catchment of aquatic animals in Thai waters and specific economic zones of Thailand (6) Extraction of Thai medicinal herbs (7) Trading and auction sale of antique objects of Thailand or objects of historical value of the country (8) Making or casting Buddha Images and monk alms-bowls (9) Land trading
List Two
BUSINESSES RELATED TO NATIONAL SAFETY OR SECURITY OR HAVING IMPACTS ON ARTS, CULTURE, TRADITIONS, CUSTOMS AND FOLKLORE HANDICRAFTS OR NATURAL RESOURCES AND THE ENVIRONMENT
Chapter 1: Businesses related to National Safety or Security
(1) Production, distribution and maintenance of:
(a) firearms, ammunition, gun powders and explosives; (b) components of firearms, ammunition and explosives; (c) armaments, ships, aircraft or vehicles for military use; (d) equipment or components of all types of war materials
(2) Domestic transportation by land, water or air, including domestic aviation
Chapter 2: Businesses Having Impacts on Arts, Culture, Traditions, Customs and Folklore Handicrafts
(1) Trading of antiques or artistic objects that are artistic works or handicrafts of Thailand (2) Production of wood carvings (3) Silkworm raising, production of Thai silk yarn, weaving of Thai silk or printing of Thai silk patterns (4) Production of Thai musical instruments (5) Production of goldware, silverware, nielloware, bronzeware or lacquerware (6) Production of crockery or porcelains representing Thai arts and culture
Chapter 3: Businesses Having Impacts on Natural Resources or the Environment
(1) Production of sugar from sugar cane (2) Salt farming, including non-sea salt farming (3) Production of rock salt (4) Mining, including rock blasting or rock crushing (5) Timber processing for production of furniture and utensils
List Three
BUSINESSES IN RESPECT OF WHICH THAI NATIONALS ARE NOT READY TO COMPETE WITH FOREIGNERS
(1) Rice milling and production of flour from rice and economic plants (2) Fishery only in respect of the hatching and raising of aquatic animals (3) Forestry from a grown forest (4) Production of plywood, veneer wood, chipboards or hardboards (5) Production of lime (6) Provision of accounting services (7) Provision of legal services (8) Provision of architectural services (9) Provision of engineering services

(10) Construction, with the exception of:	
	(a) Construction of structures for delivery of infrastructure public services in the sphere of public utilities or transportation requiring the use of special apparatuses, machines, technology or expertise, with the minimum capital of five hundred million Baht or upwards from foreigners; (b) Construction of other types as prescribed in the Ministerial Regulation
(11) Brokerage or agency businesses, with the exception of:	
	(a) being a broker or an agent in the sale or purchase of securities or in services related to futures trading of agricultural commodities or financing instruments or securities; (b) being a broker or an agent in the sale, purchase or procurement of goods or services necessary for the production or the provision of services amongst affiliated enterprises; (c) being a broker or an agent in the sale or purchase, procurement, distribution or acquisition of domestic and foreign markets for the distribution of domestically manufactured or imported goods, which is in character the operation of international trade, with the minimum capital of one hundred million Baht or upwards from foreigners (d) being a broker or an agent of other types as prescribed in the Ministerial Regulation
(12) Sale by auction, with the exception of:	
	(a) a sale by auction which, in character, involves international bidding of items other than antiques, objects of antiquity or artistic objects that are artistic works or handicrafts or objects of antiquity of Thailand or of historical value of the country; (b) sales by auction of other types as prescribed in the Ministerial Regulation
(13) Internal trade related to traditional agricultural products or produce not yet prohibited by law, except agricultural futures trading in the Agricultural Futures Exchange of Thailand without delivery or taking delivery of agricultural commodities within the country [as amended by Royal Decree, B.E. 2556 (2013)] (14) Retail sale of goods of all types with the total minimum capital in the amount lower than one hundred million Baht or with the minimum capital of each store in the amount lower than twenty million Baht (15) Wholesale of all types with the minimum capital of each store in the amount lower than one hundred million Baht (16) Advertising business (17) Hotel business, with the exception of the hotel management service (18) Guided touring (19) Sale of food and beverages (20) Cultivation, propagation or development of plant varieties	
(21) Other service businesses, with the exception of service businesses as prescribed in the Ministerial Regulation [as amended by Ministerial Regulation, B.E. 2556 (2013); Ministerial Regulation No. 2, B.E. 2559 (2016); Ministerial Regulation No. 3, B.E. 2560 (2017); Ministerial Regulation No. 4, B.E. 2562 (2019)	
	(1) Securities business and other businesses under the law on securities and securities exchange: (a) securities trading; (b) serving as an investment consultant; (c) securities underwriting; (d) borrowing and lending securities; (e) mutual fund management; (f) private fund management; (g) venture capital management; (h) granting loans for securities business; (i) serving as a financial consultant; (j) serving as a securities registrar; (k) trusteeship of assets of securities companies' or derivatives traders' customers; (l) serving as a private fund custodian; (m) serving as a mutual fund supervisor; and (n) serving as a debenture holders' representative;
	(2) Derivatives business under the law on derivatives: (a) serving as a derivatives dealer; (b) serving as a derivatives advisor; and (c) serving as a derivatives fund manager;
	(3) Serving as a trustee under the law on trust for transactions in capital market.
	(4) financial institution business, businesses incidental to or necessary for the operation of a financial institution business and the businesses of companies in the financial group of a financial institution pursuant to the law on financial institutions: (a) commercial banking business; (b) bank representative office service business; (c) Shariah financial service; (d) financial institution agent; (e) cash deposit services under terms of withdrawal on demand by a customer and custodian services; (f) private sector repurchase;

	(g) agent to receive applications and collect insurance premiums or service fees for export insurance and credit insurance for customers; (h) services relating to financial businesses offered to financial institutions, companies within the financial group, the Bank of Thailand and government agencies; (i) leasing of immovable property; (j) purchase or assignment of loan debts; (k) financing service; (l) documentation relating to customer's businesses; (m) debt collection or application receiving agent; (n) hire purchase and leasing.
	(5) life insurance business under the law on life insurance;
	(6) Insurance business under the law on insurance.
	(7) asset management business under the law on asset management company; (8) representative office of foreign juristic person in international trade service pursuant to the Rules of the Prime Minister's Office on Establishment of Visa and Work Permit Service Center B.E. 2540 (1997); (9) regional office of foreign juristic person in international trade service pursuant to the Rules of the Prime Minister's Office on Establishment of Visa and Work Permit Service Center B.E. 2540 (1997); (10) service business to which a government agency under the law on budgetary procedures is a party; (11) service business to which a state enterprise under the law on budgetary procedures is a party
	(12) Services provided to affiliates and subsidiary companies, namely (a) Provision of loans; (b) Leasing office space with utilities; and (c) Consulting services on specific issues: management, marketing, human resources, or information technology.

Notes

[1] See Ministerial Regulation No. 4 Determining Service Businesses which Are Not Required to Apply for Permission for a Foreign Business License B.E. 2562 (2019).

[2] "What is a minimum capital requirement? It is the share capital that must be deposited by shareholders before starting business operations. For the Doing Business starting a business indicator the paid-in minimum capital is usually the amount that an entrepreneur needs to deposit in a commercial bank or with a notary when, or shortly after, incorporating a business, even if the deposited amount can be withdrawn soon after a company is created" (World Bank, 2014).

[3] The FBA defines foreigners as: (1) a natural person not of Thai nationality; (2) a juridical person not registered in Thailand; (3) a juridical person registered in Thailand in which (1) or (2) hold no less than 50% of the total capital shares or, in the case of a limited partnership or registered ordinary partnership, the managing partner or the manager of which is natural person not of Thai nationality; (4) a juridical person registered in Thailand in which (1), (2), or (3) hold no less than 50% of the total capital shares.

[4] See, for instance, Bangkok Post (2018) and the recent announcement of a government programme developed by the Department of Special Investigation in collaboration with the Department of Business Development, the Provincial Administration Department, the Revenue Department and the Immigration Bureau in order to analyse and track down offenders who run afoul of the Foreign Business Act (Bangkok Post, 2019).

7 Domestic legal framework for investment protection and dispute settlement

This chapter provides an overview of Thailand's domestic legal framework for investment protection and dispute settlement. It takes stock of the regulatory framework for investment in force today and examines the level of protection granted to investments made by both domestic and foreign investors. The chapter focuses on two main domestic laws in this regard – the Investment Promotion Act 1977 and the Foreign Business Act 1999, as amended – but also considers other laws, especially those affecting non-promoted investors. It addresses the domestic regimes for non-discrimination, expropriation of property, protection for intellectual property, land tenure and administration, cybersecurity, contract enforcement in the domestic court system, alternative dispute resolution and competition policy.

Summary

Rules that clarify establishment and operations of a business, principally under the Foreign Business Act 1999 as discussed in Chapter 6, are only one aspect of the broader legal framework that affects investment. Protections for property rights, contractual rights and other legal guarantees, combined with efficient enforcement and dispute resolution mechanisms, are equally important elements of this legal framework for all investors. This chapter will focus on these aspects of the legal framework by seeking to identify the main improvements brought about by successive reforms as well as areas where further progress could be achieved.

Thai law provides guarantees regarding protection from expropriation without compensation and non-discrimination for some, but not all, investors. A range of other treatment guarantees are provided for BOI promoted investors under the Investment Promotion Act 1977 (No. 4) (2017 revision), but these are only available to investors who hold a BOI promotion certificate (discussed further in Chapter 5). As described below, however, there is room for improvement in the levels of protection that investors can expect under Thai law when compared with international good practices. There may also be scope to consolidate the key protections, incentives and obligations for investors (including non-promoted investors) into a single law to improve accessibility. Unlike many of its ASEAN partners, Thailand does not have a single investment law, which means that these aspects of the legal regime affecting investors are scattered across a range of different laws.

Thailand has a well-established system for land rights that is generally upheld in practice, but the legislation governing land tenure still significantly restricts foreigners' rights to acquire land. The current land titling and registration system has undergone a substantial overhaul since the mid-1980s, with a number of important efficiency and technological advances. Some concerns persist regarding coordination between the various land administration authorities, deficient levels of smallholder rights and the level of electronically-available land records. For the most part, these challenges are still to be addressed. Ongoing efforts to computerise land titling information, especially in regional land offices, are encouraging in terms of their ability to improve the land record management system and reinforce the security of land titles.

The government appears to be stepping up its efforts to tackle two important areas for the government's vision of moving towards a value-based and innovation-driven economy under the Thailand 4.0 strategy – the protection of intellectual property (IP) rights and cybersecurity. Strong IP rights provide investors with an incentive to invest in R&D for innovative products and processes. The legal and institutional framework for protecting investors' IP rights has been strengthened in a number of respects in recent years as the government seeks to bring Thailand's IP regulations closer to international good practices and standards. The government is pursuing a range of different initiatives to address persistent concerns from investors regarding the effectiveness of IP enforcement measures. Likewise, cybersecurity and data protection are of increasing concern for all investors in Thailand, not only digital and new technology firms that Thailand's 4.0 strategy have placed at the forefront of the government's policy agenda. The government has recently gazetted two important new pieces of legislation in this area – the Cybersecurity Maintenance Act 2019 and the Personal Data Protection Act 2019. The implementation of these new regimes will be challenging in many respects and will no doubt be closely followed by investors.

In terms of dispute resolution, the Thai courts have a reasonable record for rule of law and contract enforcement when compared to similar economies. The main concerns for investors interacting with the Thai court system relate to the speed and efficiency of case management and the availability of electronic court services, among others. The government has in recent years prioritised efforts to improve the legal framework and institutions for public integrity as part of a broader focus on public sector reforms to improve the business environment. Alternative dispute resolution, primarily arbitration, is widely recognised and well-practiced in Thailand, which is generally considered to be an arbitration-friendly jurisdiction. The new Arbitration Act B.E. 2562 (2019), which amended the previous Arbitration Act to allow foreign arbitrators and lawyers to perform their duties in arbitral proceedings conducted in Thailand without having to obtain work permits, will contribute to the development of Bangkok as a regional hub for international arbitration in the near future.

Main policy recommendations

- Evaluate possibilities for improving key investment protections under Thai law. Consolidating the key protections, incentives and obligations for investors (including non-promoted investors) into a single law may improve transparency and predictability of the legal framework by helping investors to navigate easily the rules that apply to investments in Thailand. This process might also provide an opportunity to bring the levels of protection from expropriation in line with international standards, codify a non-discrimination principle and consider the appropriate level of obligations placed on investors.
- Continue to prioritise efforts to improve the effectiveness of intellectual property (IP) enforcement measures. Despite a relatively well-developed legal framework for IP rights protection in Thailand, investors continue to report relatively high levels of IP rights infringement, including through the widespread availability of counterfeited goods and unlicensed computer software. The government is already pursuing a range of different initiatives that seek to address these problems but further progress in the implementation of these initiatives may improve overall investor confidence.
- Evaluate the costs and benefits of maintaining the current restrictions on land ownership for foreigners. While there are some ways for foreigners to acquire land under Thai law, including for the purposes of carrying out a promoted business under the BOI investment promotion regime, the overall effect of the Land Code 1954 is to place significant restrictions on the ability of foreign nationals to own land. Access to electronic information in English regarding land administration system and land tenure rights for foreigners might also be improved.
- Maintain cybersecurity as a national policy priority. Investors will no doubt follow closely the government's implementation of the Cybersecurity Maintenance Act 2019, which came into force in May 2019, and the Personal Data Protection Act 2019, which came into force in May 2020, although the effective date for key provisions in the law has been pushed off until May 2021. All efforts should be made to ensure that these Acts are implemented in a manner that achieves a measurable impact on reducing cyber threats in Thailand and establishes an effective framework for data protection in line with international good practices.

Protection from expropriation for investors under Thai law

Protection against expropriation of property without fair compensation is one of the core rights that investors expect from a sound legal framework for investment. Expropriation regimes should be transparent, predictable and easily understandable for investors. There are several different expropriation regimes under Thai law that appear to apply concurrently to some investors and not others. These rules are narrowly focussed on expropriation of land and are scattered across various different laws, which adds a degree of complexity for investors wishing to understand this aspect of the legal framework that affects their investments. Overall, as explained below, the government may wish to consider improving the current level of protection from expropriation as the current regime falls short of good practices in other countries in a number of different ways.

The main Thai laws affecting investors' rights with respect to expropriation are:

- the Constitution (Section 37), which protects property rights held by Thai nationals from expropriation without fair compensation. It requires the government to pass an expropriation law that specifies the public purpose for which the property is being taken;

- the Investment Promotion Act 1977 (No. 4) (Section 43), which provides that the government "shall not nationalise the activity of the promoted person"; and
- the Expropriation and Acquisition of Immovable Property Act B.E. 2562 (2019) (EAIP Act), which applies to all property owners, whether foreign or domestic nationals. Chapter I establishes a framework for the government to expropriate immovable property that it needs to fulfil public purpose objectives. Chapter II has detailed provisions on the measures of compensation for land owners, lessees and other persons that may be affected by an expropriation. It provides clear and detailed procedures on the expropriation process. Affected persons may appeal decisions made by designated government officials on compensation to the government minister responsible for the expropriation and to the Thai courts.

Many other Thai laws incorporate or refer to the expropriation regime in the EAIP Act. Some of these laws address specific types of land usage. For example, the Land Readjustment Act 2004 empowers the Land Readjustment Committee to issue regulations concerning expropriations that may be needed as part of a government initiative to re-plot and develop land to improve overall land use. Similar powers are vested in the Agricultural Land Reform Board, the Town Planning Office and the Royal Irrigation Department (see Section 29 of the Agricultural Land Reform Act 1975, the Town Planning Act 2019 and Section 46 of the Agricultural Land Consolidation Act 2015, respectively). The Department of Lands has similar rights under the Land Code 1954. The Land Development Act 2000 (No. 2) (2015 revision) prohibits expropriation of land for use by public utilities unless it is carried out in the manner envisaged in the EAIP Act. Other sector-specific laws also refer to the EAIP Act (e.g., the Energy Industry Act 2007, which vests expropriation powers in the Office of the Energy Regulatory Commission).

The expropriation regimes under the Investment Promotion Act 1977 (No. 4) and the EAIP Act suffer from several shortcomings when compared to international good practices. With respect to the guarantee of freedom from nationalisation in the Investment Promotion Act 1977 (No. 4), the overarching issue is one of limited scope. Section 43 of the Act is limited to protection from nationalisation, which is a form of direct expropriation that generally covers an entire industry or geographic region. These forms of direct government takings of private property have become less frequent in recent decades. Expropriation is a broader concept. Many expropriations today are indirect as they do not result from an expropriation law or decree, which would normally be associated with direct takings, but rather they result from regulatory or other state measures that have the same effect as an expropriation. The Act does not protect against indirect expropriation, which has become a more important concern than direct expropriation for investors in most countries around the world.

Another problem with this regime is that it does not recognise the government's right to nationalise property for public interest purposes in certain situations. Under international law, states may lawfully expropriate property if it is done for public purposes, on a non-discriminatory basis, in accordance with due process of law, and accompanied by compensation. These elements have become common features of domestic legal systems and expropriation provisions in Thailand's investment treaties (discussed below). The measure of compensation for a lawful taking and the method of its valuation is an important concern for investors. The Investment Promotion Act 1977 (No. 4) is silent on this issue, but expropriation regimes in other Thai laws refer to fair or market value for the property at the date of the expropriation decree (discussed below; see, e.g. Section 43 of the Town Planning Act 1975 (No. 4) and Section 21 of the Expropriation of Immovable Property Act 1987). The Act is also silent on the recourse available to promoted persons in Thai courts or tribunals in relation to a nationalisation, which further detracts from the effectiveness and transparency of the regime.

A related problem is that the Investment Promotion Act 1977 (No. 4) does not distinguish between compensable and non-compensable forms of indirect expropriation. It is good practice to preserve a minimum level of policy space for the government to implement public policy objectives without being constrained by obligations to compensate affected investors. Domestic expropriation regimes in several other ASEAN countries and some of Thailand's investment treaties contain general exceptions that allow governments to regulate in the public interest (e.g. regarding health or environmental matters) without the need to compensate affected investors even if the measures taken have an economic impact on particular investments.

While the EAIP Act provides a more comprehensive framework for expropriation than the Investment Promotion Act 1977 (No. 4) and is available to all investors, it still falls short of good practices in other countries. It is limited to direct takings of land in accordance with a royal decree identifying the property to be taken and the purpose of the taking. Most importantly, it does not address indirect expropriations which, as discussed above, are likely to be more relevant for investor confidence. It is also narrower in scope than the expropriation provisions that are routinely included in Thailand's investment treaties, which creates differential levels of treatment for investors based on their nationality. This issue is addressed in Chapter 8 below.

Non-discrimination under Thai law

Neither the Foreign Business Act nor the Investment Promotion Act enshrine a principle of non-discrimination in the government's dealing with foreign and domestic investors. Non-discrimination is generally considered to be an important aspect of the rule of law. Many governments around the world affirm by law their commitment to treating domestic and foreign investors equally. This can send a positive signal regarding an open investment policy, without prejudice to the possibility for the government to preserve its right to implement certain policies that are exempted from this broad equality guarantee.

Some aspects of equal treatment under Thai law appear to apply to domestic and promoted investors. An equal treatment guarantee in Section 4 of the Thai Constitution applies to Thai nationals. While certain rights are granted to foreign nationals under the BOI's investment promotion regime, the application criteria and other aspects of the Act apply equally, as drafted, to foreign and domestic investors. But there is no formal commitment by the government in the Investment Promotion Act or elsewhere in Thai law to treat foreign and domestic investors equally in the application of those laws and the implementation of measures that would affect promoted investors.

The government may therefore wish to consider codifying the national treatment principle in domestic law. This is already a common feature of many of Thailand's investment treaties (discussed separately below). It also features as part of APEC's Non-Binding Investment Principles that have been endorsed by APEC members, including Thailand. The National Treatment Instrument of the OECD Declaration on International Investment and Multinational Enterprises defines national treatment as the commitment of a government to treat investments controlled by nationals or residents of another country no less favourably than domestic investments in like circumstances. This guarantee would signal that the government is committed to providing a predictable and non-discriminatory framework to prospective investors. It is a common feature of domestic investment laws in ASEAN countries, including through recent amendments to investment laws in Lao PDR (Law on Investment Promotion, as amended in 2017, Article 60) and Myanmar (Investment Law, enacted in 2016, Article 47).

Formalising non-discrimination and/or national treatment principles in Thai law would create a level playing field between foreign and domestic investors. While the government may not currently seek to discriminate against foreign investors in practice, a binding legal commitment to this effect would undoubtedly improve investor confidence. Such a commitment need not be unduly onerous on the government. It should be calibrated through appropriate exceptions to achieve a balanced policy position that reflects Thailand's priorities. No country applies the national treatment principle unequivocally. It is almost always circumscribed by a list of exceptions, which should be transparent and clearly defined. The OECD's Policy Framework for Investment (PFI) identifies three types of common exceptions and restrictions to the national treatment principle: general exceptions (e.g., protection of national security); subject-specific exceptions (e.g., intellectual property, taxation provisions in bilateral tax treaties); and sector-specific exceptions (e.g., specific industries, such as financial services and transport). The government may wish to align its approach to sector-specific exceptions for those sectors already restricted to foreign investment under the Foreign Business Act 1999. Other policies may need to be aligned too. For example, the Thai Innovation List established in 2016 appears to grant certain Thai businesses preferential access to government procurement which is not available to foreigners. Thailand has adopted several different approaches to these exceptions for national treatment guarantees in its investment treaties (Box 8.2 in Chapter 8).

Promoted investors are granted some additional protections

Promoted investors benefit from several other protections under the Investment Promotion Act, along with a range of other rights and incentives discussed in Chapter 5. The Act guarantees that the government will protect promoted investments from the adverse effects of regulatory changes in some areas such as export restrictions and price controls (Sections 46-47). It also prohibits the government from engaging in anti-competitive conduct with respect to the activities of promoted persons, including through its state-owned enterprises (Sections 48-49). It provides authority for the BOI to grant tax relief and other assistance to promoted persons (Sections 49-53). Free transfer of funds abroad from investment activities in Thailand is also granted (Section 37).

These various guarantees are likely to be considered as important for promoted investors. But in light of the expropriation protections and lack of clarity regarding non-discrimination, as discussed above, the suite of protections on offer for investors in Thailand – even for promoted investors – falls short of protections offered by other countries, including some of Thailand's ASEAN partners (Table 7.1). Moreover they are only available to investors carrying out activities that the BOI decides to promote rather than all investors equally. There is therefore substantial scope to improve the effectiveness and appeal for investors of Thailand's domestic laws on investment protection. This does not need to be a radical proposition; it could be achieved, for example, through incremental amendments to the legal framework over time.

Table 7.1. Comparison of domestic legal frameworks in ASEAN countries for key investment

	BRN	KHM	IDN	LAO	MYS	MMR	PHL	SGP	THA	VNM
Existence of a single investment law covering key investment protections	No	Yes	Yes	Yes	No	Yes	2 inv. laws	No	2 inv. laws; several other relevant laws	Yes
Guarantee of non-discrimination at post-establishment stage enshrined in domestic legislation	No but *de facto* non-discrim.	Yes, except for land	Yes	Yes	No	Yes	Yes	Yes	No	Yes
Protection against expropriation: Yes = universally applicable; specific investors only (e.g. qualifying investors under investment promotion law)	Yes	Yes but narrow and vague	Yes	Yes	Yes	Yes	Yes	Yes	Yes but limited scope	Yes
Measure of compensation for lawful expropriation specified in domestic laws, including	Yes (market value)	No	Yes (market value)	Yes (market price)	Yes (adequate compensation)	Yes (fair market value but some conditions)	Yes (just compensation)	Yes (market value)	Yes (fair compensation; fair market value)	Yes (market price)

	BRN	KHM	IDN	LAO	MYS	MMR	PHL	SGP	THA	VNM
constitution, if applicable										
Guarantee of free transfer of funds provided by law	/	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Consolidating and improving key investment protections

Consolidating the key protections and incentives for all investors (including non-promoted investors) into a single law may improve transparency and predictability of the legal framework by helping investors to navigate easily the legal rules that apply to investments in Thailand.

The process of designing a unified law may provide opportunities to address the potential shortcomings in the legal framework discussed above. The government could, for example, conceivably use such a process as an opportunity to consult with stakeholders on investors' perceptions regarding the existing levels of protections and consider codifying a non-discrimination principle and protection from expropriation for the reasons discussed above. It could also consider the merit of consolidating a list of investor obligations that already exist under Thai law in a single place (e.g., 2017 amendments to the Foreign Business Act 1999, Section 11/1, that require investment promotion assessments every two years to demonstrate social and economic benefits; performance requirements that may be imposed by BOI under Section 20 of the National Competitive Enhancement for Target Industries Act 2017). Additional investor obligations might be considered in line with recent ASEAN examples (e.g. Indonesia's Investment Law No. 25/2007, Articles 14-17; Myanmar's Investment Law No. 40/2016, Articles 65-72). It may also be an occasion to consider dispute settlement procedures for investors, a topic on which the current investment laws are silent. A gap analysis between domestic and international investment obligations and protections as part of this process may also allow policy makers to improve the coherence of these overlapping legal regimes (discussed further below in relation to Thailand's investment treaties).

Alternatively, the government may wish to continue its efforts to make laws affecting investors transparent and easily accessible. Many Thai laws have been translated into English by the Office of the Council of State and others, including Thai law firms, as part of Thailand's Law for ASEAN project. These translations have been made available on the Office of the Council of State website. But not all laws appear to have an official English translation (e.g. the Expropriation and Acquisition of Immovable Property Act B.E. 2562 (2019). The Government Gazette website appears to publish documents only in the Thai language. The government may wish to consider disseminating investment-related laws in English on the BOI website, including key sector-specific laws, to improve visibility and accessibility.

Strong legal framework for protecting IP rights but further progress needed

An effective regime for registering, protecting and enforcing intellectual property (IP) rights is a crucial concern for many investors. Strong IP rights provide investors with an incentive to invest in R&D for innovative products and processes, which is a focus of Thailand's 4.0 strategy. These rights also instil confidence in investors sharing new technologies, for instance through joint ventures and licensing agreements. Successful innovations may be suffused within and across economies in this way, and contribute to elevating productivity and growth. At the same time, IP rights entitle their holders to the exclusive right to market their innovation for a certain period of time. The protection granted to intellectual property therefore needs to strike a balance between the need to foster innovation and the society's interest in having certain products, such as pharmaceutical products, priced affordably.

Thailand has an extensive legal framework for IP rights protection that complies with international standards in four main areas: trademarks, patents, copyrights and trade secrets. Laws in three of these areas have been amended recently: the Trademark Act B.E. 2534 (1999) was amended by Act (No. 3) B.E. 2559 (2016 revision); the Copyright Act B.E. 2537 (1994) was amended by Act (Nos. 2 and 3) B.E. 2558 (2015 revision) and Act (No. 4) B.E. 2561 (2018 revision); and the Trade Secrets Act B.E. 2545 (2002) was amended by Act (No. 2) B.E. 2558 (2015 revision). There is no domestic law dedicated to the protection of industrial designs but this area is addressed in the Patent Act B.E. 2522 (1979). A range of other IP-related laws protect specific categories of IP rights, including the Protection of Geographical Indications Act B.E. 2546 (2003), the Protection of Layout-Designs of Integrated Circuits Act B.E. 2543 (2000), the Plant Varieties Protection Act B.E. 2542 (1999) (amendments for which were proposed by the Ministry of Agriculture and Cooperatives in a draft bill published in 2018) and the Protection and Promotion of Thai Traditional Medical Knowledge Act B.E. 2542 (1999).

At the international level, Thailand joined the World Intellectual Property Organisation in 1989 and the World Trade Organisation in 1995. As a member of the WTO, Thailand complies with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which is arguably the most important international treaty on IP protection. Thailand has also signed several key WIPO-administered IP treaties including the Berne Convention for the Protection of Literary and Artistic Works (in 1931), the Paris Convention for the Protection of Industrial Property (in 2008), the Patent Cooperation Treaty (in 2009), the Madrid Protocol Concerning the International Registration of Marks (in 2017) and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (in 2019).

Despite a relatively well-developed legal framework for IP rights protection in Thailand, issues remain with the effectiveness of enforcement measures. Some stakeholders have noted that coordination between enforcement agencies has improved (US Department of State, 2019) but investors still routinely cite IP rights infringement issues as a principal problem in many ASEAN countries, including Thailand (IPR SME Helpdesk, 2016). EU and US-based stakeholders have recently reported that the widespread availability of counterfeited goods and computer software piracy persists in Thailand (European Commission, 2018; EABC, 2018; US Embassy & Consulate in Thailand, 2016; US Department of State, 2019). Recent estimates indicate that the rate of unlicensed software installation has decreased from 72% in 2011 to 66% in 2017 (BSA, 2018). A larger challenge lies in changing attitudes to software piracy in the business community over the long term and encouraging businesses to use licensed computer software. Some stakeholders have also raised concerns that commercial land owners are not subject to penalties when their tenants commit IP rights infringements.

These concerns are partly reflected in Thailand's international rankings in this area. Thailand ranks 99th out of 141 countries in terms of IP protection in WEF's 2019 Global Competitiveness Report; 43rd out of 129 economies compared in the Global Innovation Index 2019 prepared by WIPO, INSEAD and Cornell University; and 45th out of 53 countries analysed in the 2020 US Chamber International IP Index, which benchmarks the IP framework in these economies on the basis of 45 different indicators. However, the USTR has upgraded Thailand from the "Priority Watch List" to the "Watch List" in its annual Special 301 Report since 2017. This Report identifies countries that the USTR considers to deny adequate and effective protection for intellectual property rights or deny fair and equitable market access for investors relying on intellectual property protection.

The government is pursuing a range of different initiatives that seek to address these well-known shortcomings (Department of Intellectual Property, 2019). The Department of Intellectual Property (DIP) published a 20-year Intellectual Property Roadmap in 2016 to drive the national economy based on innovation and technology in line with the Thailand 4.0 economic model. The Roadmap address policies to improve all aspects of IP management including the creation, protection, commercialisation and enforcement of IP rights. It also covers policy areas that are important to local communities such as geographical indications, genetic resources, traditional knowledge and traditional cultural expressions.

DIP publishes regular reports on its website regarding its enforcement activities as well as monthly statistics on the number of raids and seizures of counterfeited goods conducted by the police, customs department and other agencies. It hosts an annual ceremony, which is televised nationally, to destroy IPR-infringing goods seized by the authorities each year. It also reports on seminars, events, social media campaigns and other awareness-raising activities for the general public and Thailand's various IP enforcement agencies on IP rights and identifying counterfeited products. DIP's efforts to suppress widespread commercial IP counterfeiting and piracy have received strong political backing from the National Committee on Intellectual Property Policy, which is chaired by the prime minister, and a government sub-committee on IPR enforcement.

In terms of anti-piracy, the Royal Thai Police in cooperation with the Office of the National Broadcasting and Telecommunications Commission established a new anti-online piracy centre in December 2018 – The Centre of Operational Policing for Thailand Against Intellectual Property Violations and Crimes on the Internet Suppression, otherwise known as COPTICS – tasked with handling complaints of online piracy. Operations carried out by COPTICS run in parallel with those carried out under the Computer Crime Act B.E. 2550 (2007), which was amended in 2017 to grant broader powers to Thai courts to block the URLs of infringing websites.

A steady train of legislative amendments are also being pursued, which are aimed primarily at future accession to international agreements (Department of Intellectual Property, 2019). The Customs Act B.E. 2560 (2017) seeks to allow Thai customs officers to act more effectively against suspected IP rights infringements by introducing new penalties for transit and trans-shipment of counterfeit and pirated goods. Various stakeholders consulted during the preparation of this Review report that these changes have been broadly welcomed by the local business community. As of November 2020, the government was in the process of amending the Patent Act B.E. 2522 (1979) to enhance the protection of industrial designs and streamline patent and industrial design procedures in preparation for Thailand's accession to the WIPO-administered Hague Agreement Concerning the International Registration of Industrial Designs. The Copyright Act B.E. 2558 (2015) is also currently being amended to enhance mechanisms to protect copyright in the digital environment and prepare for Thailand's accession to the WIPO Copyright Treaty 1996. Some stakeholders have raised concerns with these amendments, including that the new website-blocking mechanism has the potential to overburden the relevant government agency and may be unwieldy for many cases of online infringement (EABC, 2018).

Engagement from a range of stakeholders has helped to sustain momentum for the recent legislative reforms. Thailand and the US, for example, have established an active dialogue on IP rights protection issues under the Thailand-US Trade and Investment Framework Agreement (2013). USTR has urged the government to consider further amendments to the Copyright Act 2015 to remove overly broad technological protection measure exceptions and procedural obstacles to enforcement against unauthorised camcording (USTR, 2019). USTR also encourages Thailand to address concerns with the backlog of pending patent applications (particularly for pharmaceutical applications), widespread use of unlicensed software in both the public and private sectors, lengthy civil IP enforcement proceedings and extensive cable and satellite signal theft.

Access to justice and the judicial system is being improved

The ability to make and enforce contracts and resolve disputes is fundamental if markets are to function properly. Good enforcement procedures enhance predictability in commercial relationships by assuring investors that their contractual rights will be upheld promptly by local courts. When procedures for enforcing contracts are overly bureaucratic and cumbersome or when contract disputes cannot be resolved in a timely and cost effective manner, companies may restrict their activities. Traders may depend more heavily on personal connections; banks may reduce the amount of lending because of doubts about their ability to collect on debts or obtain control of property pledged as collateral to secure loans; and transactions may tend to be conducted on a cash-only basis. This limits the funding available for business expansion and slows down trade, investment, economic growth and development.

Thailand has a well-established court system established under its Constitution. The four principal branches of the court hierarchy are the Constitutional Court, the Administrative Court, the Courts of Justice and the Military Court. Contract enforcement cases are handled by the Courts of Justice, which are structured in a three-tiered system of first instance courts, appeal courts and the Supreme Court. There are also at least four specialised courts within the Courts of Justice staffed by judges with strong technical knowledge in specific areas: the Central Labour Court, the Central Intellectual Property and International Trade Court, the Central Tax Court, and the Central Bankruptcy Court. A Specialised Appeal Court handles appeals from these specialised courts. Disputes between an administrative agency or government official and individuals (private citizens or public officials) are handled by the Administrative Court.

Thailand has a reasonable record for rule of law and contract enforcement when compared to similar economies. It ranks 76th of 126 all countries scored in the 2019 edition of the World Justice Project Rule of Law Index and 10th of 15 countries included in the indicator from the East Asia & Pacific region.[1] Thailand performs weaker when compared to other upper-middle income countries included in the indicator, ranking below the median in all eight sub-components covered of the WJP index in this country grouping. The World Bank's Doing Business 2020 Report, which benchmarks 190 countries on a range of different indicators related to business activity, suggests that Thailand's contract enforcement mechanisms are relatively effective in practice, ranking the country 37th of 190 countries in this area of the indicator.

The government is pursuing measures to address the perceived shortcomings in the judicial system. Some of the main concerns for investors in their interactions with the Thai courts relate to the speed and efficiency of case management and online accessibility (Jullamon, 2015; EABC, 2018; US Department of State, 2019). While commercial arbitrations may take as little as 12 to 18 months to resolve a dispute, litigation in Thai courts can take considerably longer – up to 18 to 24 months for a first instance judgment and another 12 to 24 months for an appeal (Tilleke & Gibbins, 2019). The government's Twelfth National Economic and Social Development Plan 2017-2022 envisages restructuring the court system and addressing the shortages in technical expertise within the judiciary. Thailand's Supreme Court has started to introduce electronic court systems, with an electronic filing system launched in May 2017 for all courts along with a pilot programme for audio recordings of some court hearings. Initiatives that seek to embrace new technologies to improve court services may become more important in the context of the government's responses to the COVID-19 pandemic, which have sought to allow companies to continue operating to the extent possible during periods of physical lockdown.

Thailand is generally seen as an arbitration-friendly jurisdiction

The Arbitration Act 2002 governs domestic and international arbitrations in Thailand, as well as the enforcement of foreign arbitral awards in line with the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). The Act provides a robust framework for arbitration in Thailand. It closely follows the Model Law published by the United Nations Commission on International Trade Law (UNCITRAL) in 1985 and amended in 2006, which is designed to assist states in reforming and modernising their laws on arbitral procedure. Unlike the Model Law, however, which was drafted to apply to international commercial arbitrations only, the Act does not distinguish between domestic and commercial arbitration.

The original text of the Act confirms expressly that arbitration clauses in contracts between State agencies and private investors are valid and binding on the parties (Section 15). Since 1993, at least three high-profile investment disputes between foreign investors and Thai government entities concerning major infrastructure and telecommunications projects have resulted in arbitration awards under the Act and its predecessor legislation, along with related litigation in the Thai courts (Sucharitkul, 2015; Nottage and Thanitcul, 2018).

The government has nevertheless changed its position several times regarding its willingness for public agencies to submit to arbitration with investors. These changes have taken the form of Cabinet resolutions, which do not have the binding legal status of laws or decrees in Thailand but must be complied with by government agencies and are generally also observed by those affected in the private sector. In 2004, the government issued a resolution that placed restrictions on arbitration clauses being agreed in concession contracts by requiring Thai Cabinet approval for such contracts on an *ad hoc* basis. This restriction was expanded to all public sector contracts under a 2009 government resolution. These developments are generally understood to have been linked to adverse arbitration awards against Thailand during this period, notably an award of over USD 150 million against the Expressway and Transit Authority in an expressway construction dispute (Nottage and Thanitcul, 2018). A 2015 resolution relaxed the government's position to some extent, whereby Cabinet approval was only maintained for two specific types of contracts – contracts under the Public-Private Partnerships Act (2013) (which has since been repealed and replaced by a new law in 2019) and concession contracts.

Despite some restrictions still in place for public-private arbitration, Thailand is generally considered to be an arbitration-friendly jurisdiction. Thai courts have a strong record of enforcing arbitral awards, even in cases where arbitral tribunals have ordered state entities to pay damages to private parties (Sahussarungsi et al, 2019; Asawarjog, 2015). While Thailand signed but never ratified the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), there are indications that the government has generally preferred contract-based arbitration as a means of binding dispute resolution. The government supported the establishment of several local arbitration institutions as early as 1968 with the Thai Commercial Arbitration Committee of the Thai Chamber of Commerce, which was followed by the Thai Arbitration Institute (TAI) in 1990 and the Thailand Arbitration Centre (THAC) established under the Arbitration Institution Act 2007. Some branches of the government have also promoted sector-specific arbitration fora for dispute resolution, including the Office of Insurance Commission (which agreed under a 1998 decree to submit all insurance-related disputes to arbitration), the Department of Intellectual Property (which published its own arbitration rules for IP-related disputes in 2002) and the Securities and Exchange Commission (which published its own rules for disputes that arise under certain financial laws).

Restrictive immigration laws, which have hampered the development of international arbitration in Thailand, also look set to be relaxed. In 2019, the Ministry of Commerce added "Alternative Dispute Resolution" to the list of targeted activities for Thailand's 4.0 strategy. One upshot is that foreign workers in this sector may be able to access the Smart Visa program, thereby easing administrative burdens. An amendment to the Arbitration Act 2002, which came into force in April 2019, also seeks to open new possibilities for foreign nationals to act as legal counsel or arbitrators in Thai-seated international arbitrations. Foreign nationals may now apply to TAI or THAC for a certificate to streamline the approval of work and residency permits from Thai immigration agencies. It remains to be seen whether these developments help to promote Bangkok as an attractive alternative to regional arbitration hubs like Hong Kong (China) and Singapore.

Other forms of alternative dispute resolution such as mediation and conciliation are available in Thailand but are not known to have been used frequently by investors to resolve investment disputes. The Civil Procedure Code provides for court-ordered mediation and conciliation. The Office of the Judiciary has also established the Alternative Dispute Resolution Office to coordinate the development of alternative dispute resolution in Thailand. Arbitration institutions such as TAI and THAC also offer mediation and conciliation services.

Significant strides towards a reliable land administration system

Secure rights for land tenure and an efficient, reliable system for land administration are indispensable for investors in many countries, including Thailand. This requires a clear legal framework for acquiring, registering and disposing of land rights, as well as proactive land use plans at all levels of government.

Land tenure

Thailand has a well-established system for land rights that is generally respected in the country, subject to some observance of customary land rights in rural areas (USAID, 2011). The primary legislation on land rights is the Land Code 1954. As of November 2020, the Code had been amended 15 times. The Code was amended in 1999 to give the Minister of Interior discretion to allow foreign investors to own up to 1600 square meters of land for residential purposes (Land Code 1954, Section 96 bis). Investors must commit at least THB 40 million for three years or more towards BOI-promoted investments or government bonds before applying for the minister's approval (Department of Lands, 2019a). Aside from this provision, foreign nationals are generally not allowed to own land under the Code.

Some other laws grant limited rights for government bodies to allow foreigners to own land that may be necessary for their business operations, even if it would normally be prohibited by the Code (see, e.g., Act on Industrial Estate Authority of Thailand 1979, Section 44 (as amended in 1996); Petroleum Act 1971, Section 65; Eastern Special Development Zone Act 2018, Section 48). The BOI Board may allow promoted persons to own land related to the promoted business activities even if these amounts exceed the limits in other laws (Investment Promotion Act 1997, Section 27). If the investor ceases business activities or loses promoted person status, it must dispose of any land acquired in this way within one year of that event. BOI has introduced an E-Land portal in October 2019 to simplify applications by promoted investors related to land acquisition.

Several other possibilities for legal and *de facto* land ownership exist. Foreigners may own up to 49% of the saleable space of condominiums built on land owned by others (Condominium Act 1979, Section 19; as amended in 1991 and 2008). Foreign nationals may also inherit land if they are the legal heir of the landowner, subject to approval by the Minister of Interior (Land Code 1954, Section 93). Foreign nationals who hold up to 49% of the shares in a Thai company or partnership, or who are married to a Thai spouse, may also be able to benefit, indirectly, from more favourable land ownership rights for Thai companies and nationals.

Notwithstanding these exceptions, the overall effect of the Land Code 1954 is to place significant restrictions on the ability of foreign nationals to own land. Business organisations such as Japan's Keidanren have noted the potential for these restrictions to adversely affect investors and their investment activities. Reforming land ownership rules has long been a sensitive topic in Thailand, however, which is unlikely to change in the near future. Thai law is more permissive regarding other land rights, including under leases and security interests over land like mortgages, as the Civil and Commercial Code (1925) does not distinguish between foreign and Thai nationals in relation to these rights.

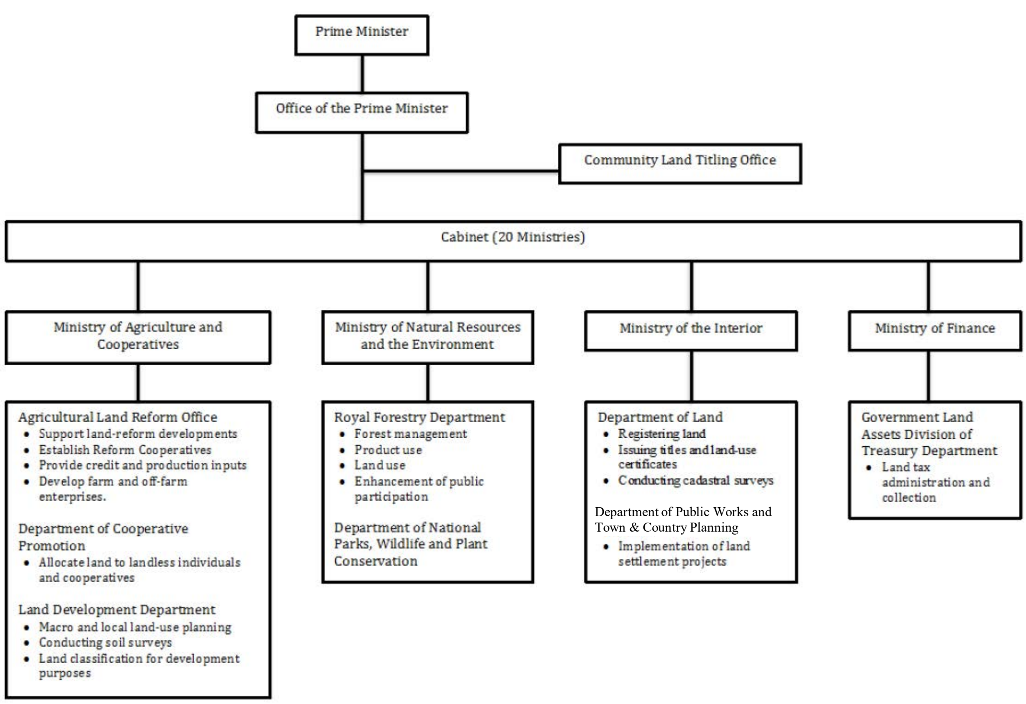
Land titling and administration

Thailand's land administration system is considered to be an efficient and transparent model for other countries in the region (USAID, 2011). Thailand ranks 67th out of 190 countries in the World Bank's Doing Business 2020 Report on the indicators relating to the efficiency and quality of land ownership and registration systems. This is the most comprehensive publicly-available benchmark for these policy areas. It aggregates four indices, all carrying the same weight, and comprises both *de jure* and *de facto* evidence on land ownership and registration. These indices provide a solid comparative assessment of how timely, costly, and effective it is to transfer ownership of property in each of the countries in the indicator, together with a wealth of information about the reliability and transparency of the land registry and mapping systems. Thailand also ranks 52nd out of 140 countries in terms of quality of land administration as assessed in WEF's 2019 Global Competitiveness Report.

Significant progress has been made in Thailand's land administration system over the past century. The Torrens system for land registration, which was pioneered in Australia in the mid-1800s, has been in place in Thailand since 1901. Before this time, all land belonged to the king, from which Thai nationals could lay claim to provide for their family (Department of Land, 2019b; Hayward, 2017). The Land Code 1954 sets out a system for land titling and administration that remains in place today. The World Bank-supported Thai Land Titling Programme (1984-2004) resulted in significant technological and efficiency improvements for the land titling system. This programme established a decentralised system for land administration and resulted in the issuance of approximately 13 million titles to clarify land ownership patterns that had previously been undocumented (Bowman, 2004).

Some areas of the current system could be improved. While decentralisation was generally welcomed, it has created some persistent governance concerns associated with coordination issues between the various national and sub-national entities that hold responsibilities for land administration (Hayward, 2017). The Office of the Prime Minister and the Cabinet have the ultimate responsibility for land policy but at least four different ministries have responsibilities for land administration and management. The Department of Lands within the Ministry of Interior oversees registration, titling and surveying; but at least four other ministries – the Ministry of Agriculture and Cooperatives, the Ministry of Natural Resources and the Environment and the Ministry of Finance – have responsibilities for other aspects of land administration (Figure 7.1). The Department of Lands alone has 830 separate offices throughout the country (Department of Lands, 2019c).

Figure 7.1. Overview of government departments involved in land administration in Thailand



Source: Hayward, 2017; Lubanski, 2012; USAID, 2011.

Another cluster of concerns relates to smallholder rights. Significant numbers of Thai nationals still do not hold documented land rights and agricultural workers continue to experience high levels of tenancy rather than ownership (Hayward et al., 2018; Hayward, 2017; Laovakul, 2016; Lubanski, 2012). The government has sought to address these issues through several reform programmes to improve land access, redistribution and titling for farmers under its broad constitutional mandate to adopt land policies. These include the Agricultural Land Reform Act 1975, a usufruct licence scheme started in 1981, the Land Readjustment Act, BE 2547 (2004) and the Community Forest Act B.E. 2562 (2019). Further efforts may, however, be needed to promote smallholder rights and reduce perceived land ownership inequalities. A recent study based on data published by the Department of Lands indicates that the top 10% of all landholders in Thailand own over three-fifths of the total land area in Thailand while the bottom 10% of land holders own just 0.07% (Laovakul, 2016).

Access to information regarding land administration and tenure might also be improved. Almost all of the information regarding land rights on the Department of Lands website is available only in Thai. While online translation services can assist investors seeking this information to some extent, many of the publications, presentations and information notices are available in a PDF format that does not permit text-based word searches (i.e. in the form of scanned images of paper-based original documents). This means that these documents are difficult to translate electronically. The scope of information available electronically could also be expanded to improve accessibility. Some efforts have been made to establish an electronic land information system in some land offices around the country (Department of Lands, 2019d). Currently, for example, boundary-mapping and cadastral information is available electronically for the Bangkok Metropolitan Land Office but land title certificates and comprehensive information regarding encumbrances such as mortgages and liens are still registered using paper-based methods. That said, the Department of Land's initiatives to implement quality controls regarding land data management in its various offices around the country are laudable attempts to regulate the decentralised caches of land rights information throughout the country.

Data security risks are one of the government's priorities

Aside from a strong framework for IP rights, aspects of the legal framework affecting cybersecurity and data protection are of increasing importance for all investors, not just digital services and new technology firms. Digital security incidents can have far-reaching economic consequences for investors in terms of disruption of operations (e.g. through inability to provide services or sabotage), direct financial loss, litigation costs, reputational damage, loss of competitiveness (e.g. in case of theft of trade secrets) and loss of trust among customers, employees, shareholders and partners. These concerns are naturally amplified for digital and new technology firms, which Thailand's presidency of ASEAN in 2019 and the Thailand 4.0 strategy have placed at the forefront of the government's policy agenda (Chapter 2 and 3).

Nascent cybersecurity regimes in many ASEAN countries would appear to leave businesses operating in the region as prime targets for cyberattacks (AT Kearney, 2018). Recent high-profile examples include cyberattacks on Thailand's largest telecommunications conglomerate, True Corporation, in March 2018 which exposed the identity documents of around 45,000 customers, including scanned ID cards, motor vehicle licenses and possibly passports, and the Thai-based subsidiary of Japan's Toyota Motor Corporation in March 2019, which detected unauthorised access on its servers during a time when Toyota Motor Corporation was the victim of a series of data breaches in Australia, Vietnam and Japan (Toyota, 2019; Reuters, 2018). While investors must develop their own risk management and data integrity strategies, governments are increasingly being called upon to support investor efforts in this area with institutions to monitor and protect against cyber threats (OECD, 2012; 2015).

The government has taken significant strides towards making cybersecurity a national policy priority. The Cybersecurity Maintenance Act 2019 came into force in May 2019. The Act creates two new national committees to coordinate Thailand's cyber security policies, reduce cyber threat risks and assess emerging threats to computing systems and data. It provides the government with broad monitoring and investigative powers regarding possible cyber threat risks. It allows the government to access digital data or seize computing hardware held by any person in Thailand as part of their mandate to prevent cyberattacks. It also requires computing and other digital service providers to provide certain personal data and abide by certain minimum standards for cyber security practices when they provide services to government agencies or companies in sectors related to critical information infrastructure (e.g., national security, essential public services, finance and banking, telecommunications, etc.).

A challenge for the government now is to ensure that the Act is implemented in a way that achieves a measurable impact in reducing cyber threats in Thailand and assuages concerns expressed by some civil society organisations and internet service providers regarding the potential implications of new data monitoring powers for online privacy and freedom of expression (Manushya, 2019). Another challenge lies in developing a complementary legal framework for data protection and online privacy. The long-awaited Personal Data Protection Act 2019 came into force in May 2020. The provisions of this Act are closely modelled on existing EU data protection regulations. Investors will no doubt follow the implementation of this Act with great interest, along with ongoing debates regarding the merits of data localisation requirements in other countries that Thailand has yet to adopt.

Competition policy has improved in recent years

Many areas of Thailand's policy framework influence the attractiveness for investors as well as the potential benefits investment can bring to its economy. While this chapter provides an in-depth assessment of investment policies, other aspects of domestic market regulation can also have a significant impact on the investment climate. This is notably the case for competition policy. A full assessment of the regime for competition would go beyond the scope of this Review and could merit a separate competition assessment by the OECD, as done for the logistics sector in Thailand for example (OECD, 2020).

Effective competition is essential for a dynamic business environment, in which firms are willing to invest and take risks. Creating and maintaining a competitive environment requires a sound, well-structured and transparent competition law, an effective competition authority that enforces this law, and, more widely, economic policies that respect the principles of competition and avoid unnecessarily restricting it. Competition regulations include consistent rulings on competition cases on the basis of procedural fairness and non-discriminatory principles. Competition policy ensures a level-playing field among businesses and investors and secures free and fair markets for all relevant stakeholders.

Thailand's competition policy has historically faced limitations in terms of enforcement.[2] The former Trade Competition Act B.E. 2542 (1999) was established by the Trade Competition Commission (TCC), comprising the Minister of Commerce, the Permanent Secretary of the Ministry of Commerce, the Secretary General of the Trade Competition Commission and more than 8-12 other representatives appointed by the Cabinet (of which half had to be from the private sector). Its secretariat was the Office of Trade Competition Commission, under the Department of Internal Trade of the Ministry of Commerce. With this setup, the Commission and the Office lacked independence and proper accountability and were more easily influenced by politicians and businesses, which led to ineffective enforcement of the Act. Furthermore, the Act prescribed exclusively criminal penalties, which required proof of guilt beyond reasonable doubt further impairing the ability of the competition authority to enforce the law.

The replacement of the former competition law in 2017 with the Trade Competition Act B.E. 2060 paves the way for fairer competition rules for all investors in Thailand and effective enforcement of competition-related offences. Crucially, the TCC is no longer under the Ministry of Commerce and operates under a newly-created independent agency known as the Office of the TCC (OTCC). Under the 2017 Act, the TCC consists of a Chairperson, a Vice Chairperson and 5 other Commissioners. Each Commissioner shall have achievements or have performed duties demonstrating that he or she has a strong expertise and experience of at least 10 years in law, economics, finance, accounting, industry, business administration, or other fields relevant to practice competition policy. Accountability of the TCC is strengthened under the Act through public consultation and public annual reporting requirements for TCC activities, an annual audit procedure with the Auditor-General of Thailand and increased public-facing transparency in the selection and appointment of TCC commissioners. The 2017 Act also introduces important new approval and reporting requirements for merger controls. The OTCC has supported these legislative changes by drafting regulations and guidelines to clarify the criteria for five anti-competitive business practices under the new Act. It also prosecuted several enforcement cases under the new Act in 2019 and 2020, which is a promising development.

While the 2017 Act applies to foreign and domestic businesses operating in Thailand, a number of exceptions exist. These include (1) central, regional and local administrations, (2) state-owned enterprises (SOEs) and public organisations which are deemed necessary for national security and maintaining public interests, (3) groups of farmers and related groups, as well as (4) businesses which are specifically regulated under other sectoral laws. Future reforms may consider updating and potentially narrowing this list of exceptions as many investors have raised concerns with the limited ability to compete in certain sectors where SOEs or large local businesses already operate and market access for foreign companies is still restricted (see Chapter 6). The government's Twelfth National Economic and Social Development Plan (2017-2022) and Twenty-Year National Strategic Plan (2017-2036) both recognise these challenges and note that they have in turn adversely affected some consumers who are deprived of a guarantee of high quality services at reasonable costs in these sectors. These considerations should also come to bear in the government's assessment of joining trade and investment agreements that require the parties to ensure that SOEs are subject to competition laws, which in turn may be a powerful tool to bring about change in domestic laws.

Ongoing efforts to tackle corruption and improve the regulatory framework

A fair, transparent, clear and predictable regulatory framework for investment is a critical determinant of investment decisions and their contribution to sustainable development. Shortcomings in the regulatory framework, including public integrity accountability mechanisms, can foster corruption: investors may be more likely to seek to protect or advance their interests through bribery and government actors may seek undue benefits. In situations where gratuity payments to civil servants responsible for regulatory oversight and enforcement are a common practice, firms that refuse to make such payments can be placed at a competitive disadvantage when compared to other firms in the same field that engage in such practices.

Despite well-developed laws in most areas and an established court system, there are complaints from some investors in their dealings with local judicial, police and public administration systems. The government's Twelfth National Economic and Social Development Plan 2017-2022 notes that "public administration has been inefficient, lacking in transparency, and highly corrupted". Thailand is ranked 99th out of 180 countries surveyed for the perceived levels of public sector corruption in Transparency International's 2018 Corruption Perceptions Index and 85th out of 141 countries for corruption indicators in WEF's 2019 Global Competitiveness Report. Around one in ten businesses operating in Thailand have experienced at least one request for a bribe payment, while four in ten businesses report that they were expected to give an informal payment to public officials to secure a government contract (World Bank, 2016).

The government has in recent years prioritised efforts to improve the legal framework and institutions for public integrity. It is currently implementing the third phase of a National Anti-Corruption Strategy in the period 2017-21, which includes plans to change societal attitudes towards corruption, raise awareness regarding conflicts of interest, and improve the effectiveness of anti-corruption mechanisms. As part of these efforts, the government has partnered with the OECD to support reforms to the legal framework for anti-corruption, which led to the OECD *Integrity Review of Thailand* being launched in 2018 (OECD, 2018a). The Review made a range of recommendations regarding inter-agency coordination, developing indicators for anti-corruption policies, introducing new ethical obligations for public officials and developing a dedicated whistle-blower protection law. The Review prompted several reforms, including the Organic Act on Anti-Corruption B.E. 2561 (2018), which replaced an earlier act criminalising corrupt practices of public officials. The new law makes companies criminally liable for bribes given to Thai state officials, foreign state officials, and officials with intergovernmental organisations, including when the bribe is made by related persons including employees, joint venture partners and agents. A second phase of the OECD partnership was launched in June 2019 to target corruption risk management, internal control and auditing, disciplinary and ethical measures and integrity safeguards in decision-making processes (OECD, 2019b).

The government has also partnered with the OECD to develop public sector reforms (OECD, 2018c). Government bureaucracy and law enforcement are among the most pressing challenges for foreign businesses operating in Thailand (AustCham, 2019). Investors have also expressed concerns regarding insufficient stakeholder consultation in law making, the lack of transparency in certain regulatory areas and overlapping responsibilities in similar policy areas across central, regional and local ministries and agencies (US Department of State, 2019). Thailand ranks behind most comparator countries in terms of co-operation between local stakeholders and bureaucratic efficacy in developing and improving public policies (OECD, 2018c). The government is pursuing a number of initiatives envisaged under the Twelfth National Economic and Social Development Plan 2017-2022 (NESDC, 2016a) to address these challenges such as:

- developing key performance indicators to assess policy programmes;
- expanding e-government services;
- publishing public consultation guidelines for new regulations, which take into consideration the OECD *Guiding Principles for Public Consultation* (NESDC, 2016b);
- launching a "regulatory guillotine" project in 2017 aimed at cutting administrative red tape for businesses in a range of areas (Box 7.1); and
- increasing fiscal autonomy for regional and local government agencies.

Box 7.1. Thailand's Regulatory Guillotine project

In 2017, the government launched a "regulatory guillotine" project to streamline unnecessary regulations that hinder socio-economic development. The project was conceived as a means to increase the competitiveness of the local market, reduce administrative burdens by eliminating obsolete or ineffective laws and licences, and complement the government's Thailand 4.0 strategy.

The first phase of the project aimed to improve Thailand's ranking in the World Bank's Ease of Doing Business Index, with the goal of becoming one of the top 20 countries by 2019. The second phase of the project, which began in late 2017, involved an extensive review of existing regulations and licensing across government, with a view to creating a more business-friendly environment in Thailand. The Conceptual Framework for the review was structured around five types of recommendations, known as the 5C principles, for addressing existing regulations (Cut, Continue, Combine, Change, Create). The review was carried out by a Guillotine Unit of around 50 persons established by the Office of the Legal Reform Commission's Subcommittee to Revise or Cancel Laws that Impede People's Occupation and

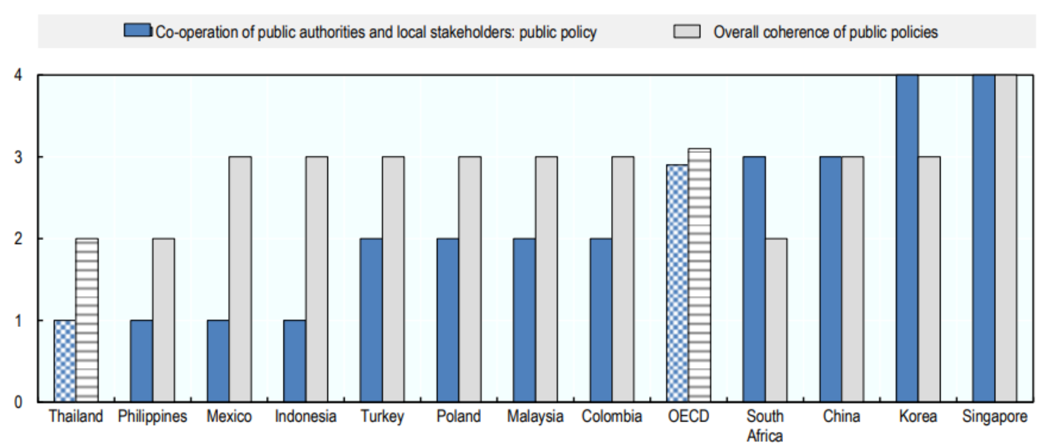
Business Operations. A range of international organisations, business associations and other parts of government, including the BOI and the Bank of Thailand, contributed to the project.

These efforts did lead to a higher score for Thailand in the Ease of Doing Business Index, with the country jumping from 48th (2017) to 26th (2018) and to 21th today (2020) out of the 190 countries in the Index. But the long-term outcomes and concrete steps that arise from this project – beyond rank-seeking behaviour – had not yet crystallised as of December 2019. The government reports that the review process is complete but the full suite of recommendations is still under consideration by the Office of the Prime Minister (SS License, 2019). No official recommendations from the review have been published but it is understood that initial results from the review have called for more than 1000 licensing procedures to be streamlined and reforms for regulations affecting visas, immigration reporting requirements and work permits. The project has recently been renamed the "Simple and Smart License" project. The government reports that it is currently conducting workshops with government departments and a range of stakeholders to present the findings of the review (SS License, 2019).

Source: OECD (2019), FDI Qualities Indictors: Measuring the sustainable development impacts of investment, OECD Publishing, Paris, http://www.oecd.org/investment/fdi-qualities-indicators.htm

The ongoing challenge will be for the government to ensure that these promising initiatives translate into better public services throughout the country. There is still room for improvement on the ground: Thailand ranks behind most comparators in terms of co-operation with local stakeholders and bureaucratic efficacy in developing and improving public policies and implementation of reforms (Figure 7.2), as well as implementing reform plans (Figure 7.3).

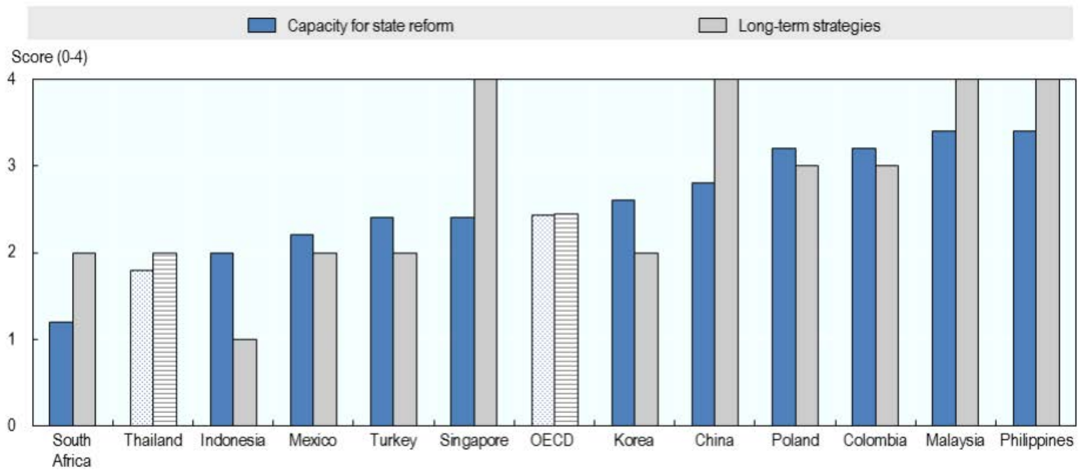
Figure 7.2. Stakeholder engagement in public policy can be improved



Note: "Cooperation of public authorities and local stakeholders" measures whether "national public authorities and local stakeholders (local authorities, private sector, NGOs, etc.) work together to develop and improve public policy effectiveness" (scores range from 0 for very low cooperation to 4 for strong cooperation). The overall coherence of public policies scores range from 0 for very weak coherence to 4 for strong coherence.
Source: Zeid Mohd Arif, A., et al. (2018), "Enhancing governance in Thailand", OECD Economics Department Working Papers, No. 1472, OECD Publishing, Paris, https://doi.org/10.1787/8ddfd4c6-en.

Figure 7.3. Thailand's capacity to implement reforms lags behind most comparator countries

Reform capacity and long-term strategy score (0-4), 2016



Note: Capacity for state reform measures the "authorities' ability to decide and actually implement reforms" (scores range from 0 for very low capacity to 4 for strong capacity). Long-term strategies indicate whether "the public authorities have a long-term strategic vision" (scores range from 0 for very weak strategic vision to 4 for strong strategic vision).
Source: Zeid Mohd Arif, A., et al. (2018), "Enhancing governance in Thailand", OECD Economics Department Working Papers, No. 1472, OECD Publishing, Paris, https://doi.org/10.1787/8ddfd4c6-en.

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Notes

[1] The World Justice Project Rule of Law Index measures rule of law adherence across 126 countries and jurisdictions worldwide. The country scores and rankings are built from more than 500 variables drawn from the assessments of more than 120,000 households and 3,800 legal experts. They capture the experiences and perceptions of ordinary citizens and in-country professionals concerning the performance of the state and its agents and the actual operation of the legal framework in their country. For Thailand, they reflect responses to the WJP Rule of Law Index questionnaire collected in 2018 by a professional survey company through face-to-face interviews with 1000 legal experts and regular persons in Bangkok, Nakhon Ratchasima and Udon Thani.

[2] This section extensively benefited from written inputs of the Office of Trade Competition Commission.

8 Investment treaty policy in Thailand

This chapter addresses Thailand's policies with respect to investment treaties. It provides an overview of the status of Thailand's investment treaties, and the historical development of the government's policy towards investment treaties, with a particular focus on the design of substantive investment protections and investor-state dispute resolution (ISDS) provisions in these treaties. It then identifies a range of considerations for possible investment treaty reform that may assist Thailand in refining its investment treaty policy in the future.

Summary

Like many countries around the world, Thailand has taken on international obligations to grant foreign investors specific treatment in international investment agreements (referred to as investment treaties or IIAs). These international obligations in bilateral investment treaties (BITs) or investment chapters of trade and investment agreements have become part of Thailand's legal framework for investment protection. Investment treaties grant protections to treaty-covered investors in addition to and independently from protections afforded by domestic law to all investors. Domestic investors are generally not covered by treaties.

Investment treaties typically contain substantive protections for covered investments against expropriation or discrimination. Provisions requiring "fair and equitable treatment" (FET) are also common and have given rise to widely varying interpretations. While there are some significant recent exceptions, investment treaties also generally give covered investors access to investor-state dispute settlement (ISDS) mechanisms that allow them access to international arbitration to seek monetary compensation in cases where they claim that the host country has infringed these provisions. While domestic law does not typically provide compensation beyond narrowly-defined situations, such as cases of expropriation, compensation has been a common remedy for investors in ISDS cases.

Investment protection provided under investment treaties can play an important role in fostering a healthy regulatory climate for investment. Expropriation or discrimination by governments does occur. Government acceptance of legitimate constraints on policies can provide investors with greater certainty and predictability, lowering unwarranted risk and the cost of capital. Domestic judicial and administrative systems provide investors with one option for protecting themselves. Access to international arbitration under investment treaties gives substantial additional leverage to covered foreign investors in their dealings with host governments.

Investment treaties are frequently promoted as a method of attracting FDI and this is a goal for many governments. Despite many studies, however, it remains difficult to establish strong evidence of impact in this regard (Pohl, 2018). Some studies suggest that treaties or instruments that reduce barriers and restrictions to foreign investments have more impact on FDI flows than BITs focused only on post-establishment protection (Mistura et al., 2019). These assumptions continue to be investigated by a growing strand of empirical literature on the purposes of investment treaties and how well they are being achieved.

Thailand's investment treaty policy deserves continued attention. The current review of Thailand's investment treaties indicates that Thailand, like many other countries, has a significant number of older-style investment treaties with vague investment protections that may create unintended consequences. Where treaties set forth vague provisions, arbitrators deciding investment disputes have had wide discretion to interpret the scope of protection which has generated inconsistencies and uncertainty. Notably following early reactions in the context of ISDS cases under the North American Free Trade Agreement (NAFTA) in the early 2000s, many governments have substantially revised their investment treaty policies in recent years in response to increased public questioning about the appropriate balance between investment protection and sovereign rights to regulate in the public interest, the uncertain scope of many investment treaties and the costs and outcomes of ISDS. Experiences with the COVID-19 pandemic may shape how governments view key treaty provisions or interpretations and how they assess the appropriate balance in investment treaties.

The government is well aware of these challenges. It plans to start the process of seeking to update some provisions in its existing older-style BITs with treaty partners once its new model BIT is finalised later in 2020. In the meantime, it is taking a leading role in multilateral discussions on ISDS reform that are developing in UNCITRAL's Working Group III. It also established in 2019 the Committee on the Protection

of International Investment to steer government policy on investment treaties and enhance policy coherence.

The government may wish to recall that regional and plurilateral trade and investment agreements involving ASEAN members offer an opportunity to create an integrated investment region in ASEAN and establish common approaches to investment protection, dispute settlement and liberalisation. At the same time, in the absence of active management of the replacement of treaties, this approach can lead to multiple investment-related agreements being concluded with the same treaty partners. This situation may jeopardise the consistent implementation of Thailand's investment treaty policies: claimants may be able to circumvent newer treaties or domestic legislation by invoking protections and ISDS provisions in older-style treaties that remain in force concurrently.

Main policy considerations

Short- and medium-term policy priorities:

- Conduct a gap analysis between Thailand's domestic laws and its obligations under investment treaties with respect to investment protections. Thai law differs from Thailand's investment treaties in these areas. Overlapping legal regimes for investment protection may raise a number of policy concerns. Identifying and reviewing the impact of these differences may allow policymakers to ensure that these overlapping legal regimes are coherent and do not detract from the government's objectives with respect to investment protections. The newly-established Committee on the Protection of International Investment would appear to be the most obvious body to lead such a process given its steering role for investment treaty policy.
- Manage potential exposure under existing investment treaties proactively. The government should continue to develop ISDS dispute prevention and case management tools. The impact of the newly-established Committee on the Protection of International Investment – which has a centralising role in dispute prevention – should be monitored and measured so that it can be improved over time. The government should continue to participate actively in the work of UNCITRAL's Working Group III and other multilateral fora on these topics. Ongoing awareness-raising efforts for line agencies and treaty negotiators regarding Thailand's investment treaties and the significance of the obligations they contain for the day-to-day functions of government officials are commendable and should be continued on a regular basis. Developing written guidance manuals or handbooks for line agencies on these topics could encourage continuity of institutional knowledge as personnel changes occur over time.
- Continue to actively participate in and follow closely government and other action on investment treaty reforms including at the OECD's Freedom of Investment (FOI) Roundtable and at UNCITRAL. Many governments, including major capital exporters, have substantially revised their policies in recent years to protect policy space or to ensure that their investment treaties create desirable incentives. For example, the US and Canada recently agreed to terminate the NAFTA and will now provide only for state-state dispute settlement (SSDS) between them in the United States-Canada-Mexico Agreement, which replaced the NAFTA when it came into force on 1 July 2020, rather than permitting direct investor claims for damages in ISDS. The EU has rejected investment arbitration in favour of a court-like model with government appointed adjudicators for ISDS. Consideration of reforms and policy discussions on frequently-invoked provisions such as FET are of particular importance in current investment treaty policy. Emerging issues such as the possible role for trade and investment treaties in fostering RBC as well as ongoing discussions about treaties and sustainable development also merit close attention and participation.

Longer-term policy priorities:

- The government should continue to implement its plans to assess and where appropriate update its investment treaties to bring them in line with the government's current priorities. The government's experiences with the COVID-19 pandemic may shape how it views key treaty provisions or interpretations as well as the appropriate balance between investor protections and the right to regulate. Depending on the context and treaty language, it may be possible to achieve these goals through joint interpretations agreed with treaty partners. In other cases, treaty amendments may be required. Replacement of older investment treaties by consent may also be appropriate in some cases.

Thailand's investment treaties

Thailand is a party to 47 investment treaties in force today, including 37 BITs, three bilateral trade and investment agreements[1] and seven plurilateral agreements concerning investment in the context of Thailand's membership of ASEAN (see summary table in Annex 8.A).

Thailand has investment treaties in force with a diverse set of economies: large and small, advanced and developing. Amongst its treaty partners, Thailand has a longstanding relationship with the United States regarding investment protection and cooperation. Three treaties relating to investment are in force today between the United States and Thailand: a Treaty of Amity and Economic Relations (1966) (Treaty of Amity), a framework agreement (2002) and an ASEAN+ framework agreement (2006). Negotiations regarding a preferential trade agreement with the United States began in 2004 but were suspended indefinitely in 2006 (Sally, 2007).

At a regional level, Thailand is a party to seven investment agreements through its membership of ASEAN. The ASEAN Comprehensive Investment Agreement (2009) (ACIA) is the foundational investment instrument that applies between the ASEAN member states. The ASEAN community has also entered into several agreements concerning investment with third states (ASEAN+ agreements). ASEAN+ agreements with Japan (2008), Australia/New Zealand (2009), Korea (2009), China (2009), India (2014) and Hong Kong, China (2017) all contain investment protections. The ASEAN+Japan agreement in force since 2008 did not originally contain investment protections or ISDS but an amending protocol signed in March 2019 adds these elements to the agreement. The amending protocol came into force on 1 August 2020 for Japan, Lao PDR, Myanmar, Singapore, Thailand and Viet Nam. Following more than eight years of negotiations, ASEAN member states and five other Asia-Pacific countries (Australia, China, Japan, Korea and New Zealand) also concluded the Regional Comprehensive Economic Partnership (RCEP) in November 2020. RCEP includes rules and disciplines on investment, while ISDS is planned for future negotiations.

At a global level, Thailand acceded to the New York Convention in 1959, which represents an important commitment to recognising foreign arbitral awards including in ISDS cases under investment treaties. Thailand signed the ICSID Convention in 1985 but never ratified it (discussed separately below).

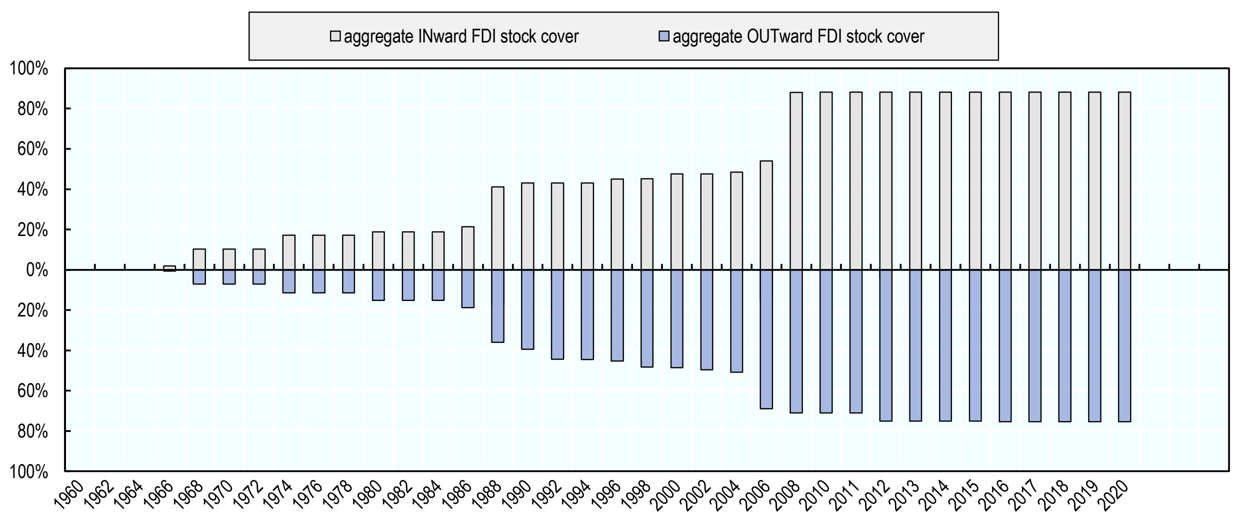
Treaty coverage for Thailand's inward and outward FDI stock

Thailand has treaty protection in force for significant portions of its inward (approximately 87%) and outward (approximately 75%) FDI stock (Figure 8.1).[2] FDI trends are discussed in further detail in Chapters 2 (inward FDI) and 11 (outward FDI), but for current purposes it is notable that four treaty relationships cover approximately two-thirds of Thailand's inward stock.[3] Two of these relationships – with the Netherlands and United States – do not involve binding ISDS provisions in the investment treaties. Investment treaties with eleven other countries account for the rest of Thailand's treaty-protected inward FDI stock.[4] Significant inward FDI stock from France and Mauritius is not covered by an investment treaty.

The Hong Kong (China)-Thailand BIT (2005) covers the largest portion of outward Thai FDI stock (approx. 16%). Eighteen other treaty relationships account for the rest of Thailand's treaty-covered outward FDI stock. Significant outward Thai FDI in the British Virgin Islands, the Cayman Islands, Mauritius and Norway is not covered by an investment treaty.

Many Thai investment treaties in force today cover none of Thailand's FDI stock or only negligible portions of it. This is a common phenomenon in many countries' treaty samples around the world (Pohl, 2018). Investment treaty relationships in force today with 27 countries are not associated with any inward FDI stock for Thailand.[5] The same is true for 24 treaty relationships and outward Thai FDI stock.[6] The result is that Thai treaty relationships with twenty countries cover no FDI stock of any kind or only negligible amounts.[7]

Figure 8.1. Approximate evolution of Thailand's inward and outward FDI stock coverage from investment treaties in force



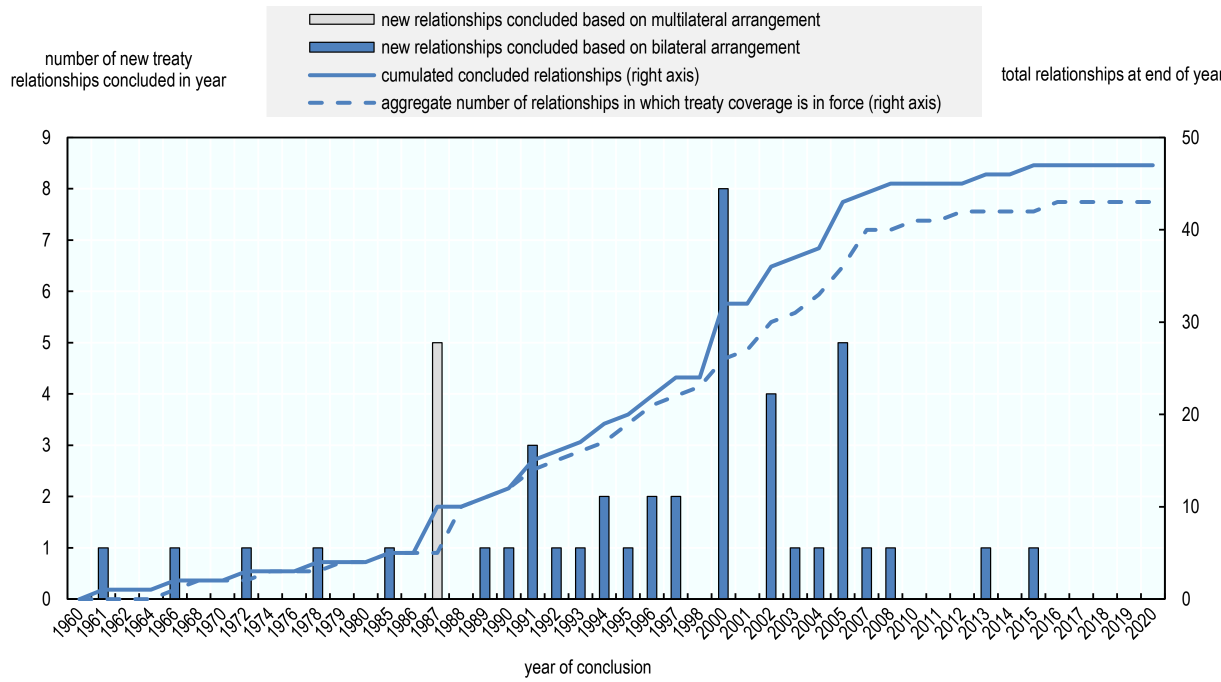
Note: Percentages are based on matching aggregate immediate bilateral FDI data and treaty relationships as of October 2020.
Source: OECD calculations based on OECD investment treaty database. FDI data was taken from the OECD FDI database and IMF Direct Investment Positions reflecting FDI stock as of 2018 rather than historical values.

Thailand's approach to investment treaties has evolved considerably over time

Thailand signed its first BIT in 1961 with Germany. It signed only four more investment treaties in the ensuing 25 years, all of which were with major capital exporters: the United States (1966), Netherlands (1972), United Kingdom (1978) and China (1985).

In 1987 the ASEAN member states signed an intra-ASEAN Investment Agreement, which was later replaced in 2009 by ACIA. This marked the start of a period of intensive treaty-making by Thailand. From 1988 to 2005, Thailand concluded 26 BITs with countries from all corners of the globe, including with capital-importing partners that had smaller economies compared to Thailand at the time (Figure 8.2).[8]

Figure 8.2. Evolution of Thailand's investment treaty relations



Source: OECD calculations based on OECD treaty database.

Thailand signed seven BITs in 2005-15, five of which are in force today. It has not signed any new BITs since 2015. Instead, the government's focus since 2004 appears to have been twofold. First, it has shifted away from negotiating BITs to prioritising investment agreements or chapters as part of broader trade agreements, both bilaterally (with Australia, New Zealand, Japan and Chile)[9] and with ASEAN+ partners (Australia, China, Hong Kong (China), India, Korea and New Zealand). Second, since 2015, efforts to revise the model BIT and establish the Committee on the Protection of International Investment (see further discussion below) have been prioritised as policy tools to harmonise and update Thailand's approach to investment treaties.

This focus looks set to continue. The government is negotiating, or plans to negotiate, trade and/or investment agreements with more than 20 partners, including some regional and mega-regional FTAs (Ministry of Foreign Affairs, 2019a). Notably, Thailand started treaty negotiations with the EU Commission in March 2013 although these negotiations are currently on hold.

The government's current priorities are to engage in multilateral efforts regarding ISDS reform and continue to review its existing model BIT. A new Framework for BIT negotiation has recently been approved by the Cabinet but is not yet publicly available. Thailand is widely seen as a leader in current debates regarding possible reforms for investment treaties. It participates actively in the meetings of the UNCITRAL Commission's Working Group III. In 2018, the government also hosted a five-day workshop in Bangkok for treaty negotiators from Asia-Pacific countries on reforming investment treaties.[10]

Treaty use: ISDS claims under Thailand's investment treaties

Thailand and Thai nationals have limited practical experience with investment treaties as a basis for legal claims by investors. As of April 2020, Thailand had been involved in at least two ISDS arbitrations. Thai investors operating abroad have not been involved in any known ISDS cases with Thailand's treaty partners but two Thai investors are reported to have notified potential claims.

Thailand as a respondent in ISDS cases

Based on publicly available information, foreign investors have filed at least two ISDS claims against Thailand. This is a relatively low number of ISDS cases as a respondent state when compared to some other countries around the world. Both of these cases were brought before an international arbitration tribunal convened under the UNCITRAL Arbitration Rules pursuant to ISDS clauses in investment treaties with Germany and Australia.

The first ISDS case brought against Thailand involved a dispute concerning a concession agreement for a construction project. The case was filed in 2005 under the Germany-Thailand BIT (2002) and led to an arbitration award issued in 2009.[11] An Australian mining company filed the second known ISDS case against Thailand in 2017 under the Australia-Thailand FTA (2004).[12] This case is pending as of November 2020. The dispute relates to the closure of Thailand's largest gold mine.

Aside from the two known ISDS cases filed against Thailand, a Malaysian national reportedly filed a notice of dispute with the government in August 2014 under the Thailand-Hong Kong, China BIT (2005) regarding a dispute over a gold mining project.[13] The Thai Government has advised that this case was settled after a successful mediation process.

Thai investors as claimants in ISDS cases

There are no publicly-known ISDS cases brought by Thai nationals under Thailand's investment treaties. Two Thai entities have, however, reportedly filed notices of dispute relating to potential claims. The estate of a Thai investor reportedly filed a notice of dispute with Malaysia in July 2017 under the 1987 ASEAN Investment Agreement regarding a real estate transaction. The investor reportedly agreed to abandon its claims under the terms of a confidential settlement agreement concluded with the Malaysian government in July 2019.[14] Another notice of dispute was reportedly filed by a Thai company against Lao PDR in April 2020 in a long-running dispute over the termination of a contract for the development of a local power plant.[15] A Thai state-owned entity has also reportedly filed a claim in an Egyptian court relating to a dispute over a gas pipeline between Egypt and Israel that has already led to several concurrent ISDS cases and contract-based arbitrations.[16] As of July 2020, press reports indicate that this claim was filed under an investment treaty but further details of the claim are not yet public.

Reconsidering Thailand's investment treaty policy

Many of Thailand's investment treaties reflect the features often associated with older-style investment treaties concluded in great numbers in the 1990s and early 2000s. Such treaties are generally characterised by a lack of specificity of the meaning of key provisions and extensive protections for covered investors. ACIA, the ASEAN+ investment agreements and some of Thailand's recent BITs contain more precise approaches in some areas. However, most of Thailand's older BITs remain in force alongside these newer agreements.

This scenario may expose Thailand to a range of unintended consequences, especially given the potential scope for ISDS claims under older investment treaties. The balance of this section examines three key aspects of possible reform – the scope of two frequently-invoked substantive protections, namely the fair and equitable treatment (FET) and most-favoured nation (MFN) treatment standards, as well as ISDS mechanisms – before considering other possible aspects of investment treaty reform.

Uncertain provisions referring generally to "fair and equitable treatment" should be clarified where possible

Almost all of Thailand's investment treaties contain provisions that require Thailand to provide covered investors and their investments with "fair and equitable treatment" (FET).[17] Since the early 2000s, the FET standard has become the most-frequent basis for claims in ISDS. Most FET provisions were agreed before the rise of ISDS claims related to this treatment standard. Starting around 2000, broad theories for the interpretation of FET provisions by arbitral tribunals emerged as the number of ISDS cases increased markedly. The investors that brought the two known ISDS cases against Thailand both invoked the FET standard.

Most FET provisions in investment treaties do not provide specific guidance on what treatment should be considered fair and equitable. Arbitral tribunals in ISDS cases under investment treaties have taken different approaches to interpreting such "bare" FET provisions, creating considerable uncertainty and high litigation costs for governments and investors alike. It has also resulted in some broad interpretations of bare FET provisions than go beyond the standards of investor protection in some advanced economies. Governments have reacted to these developments in various ways, including by adopting more precise or restrictive approaches to FET or excluding FET in recent treaties (Box 8.1). Thailand's varying approaches to FET in its existing treaties can usefully be compared with these recent approaches in broader treaty practice.

Some of Thailand's investment treaties adopt some of these more precise or restrictive approaches to FET. The FET provisions in ACIA and all of the ASEAN+ treaties – including the new protocol to the ASEAN+ Japan agreement – state that FET requires the treaty partners "not to deny justice in any legal or administrative proceedings in accordance with the principle of due process of law", which is generally understood to be a high standard. All of these treaties except ACIA (2009) and the China-ASEAN Investment Agreement (2009) also expressly limit FET to the customary international law standard for the treatment of aliens and clarify that it does not create additional substantive rights. Thailand's BITs with Canada, Croatia, Lao PDR and Viet Nam, as well as its bilateral trade and investment agreement with Japan, require FET "in accordance with" international law or expressly limit FET to the customary international law standard for the treatment of aliens.[18] None of Thailand's investment treaties refers expressly to MST FET.

FET provisions in other Thai investment treaties may leave scope for broad interpretations by arbitral tribunals. For example, the Belgium/Luxembourg-Thailand BIT (2002) refers to FET as "in no case … less favourable than … recognised by international law". This creates a "floor" for FET, rather than a "ceiling" that would limit FET to the protections already afforded under international law. No guidance is provided about the extent to which protections may exceed those under international law. Other treaties contain several different references to FET. For example, Thailand's BITs with Lao PDR (1990) and Viet Nam (1992) contain multiple references to FET, including some that specify FET "in conformity with principles of international law" and others that do not. This may generate additional uncertainty.

Most of Thailand's treaties refer to "bare" FET without any further specific guidance on its meaning. The prevalence of "bare" FET provisions and of varying approaches more generally creates uncertainty as to the scope of these FET obligations and exposure to expansive interpretations by arbitral tribunals in ISDS cases. More specific approaches to FET provisions could improve predictability for the government, investors and arbitrators alike. They could also potentially contribute to preserving the government's right to regulate in the context of investment treaties (Gaukrodger, 2017a, 2017b). In some cases, agreement on new treaty language may be required to reflect government intent and preclude undesirable interpretations. In other cases, governments may be able to achieve greater clarity on the scope of FET by agreeing on joint government interpretations of provisions in existing investment treaties with treaty partners.[19]

Box 8.1. Recent approaches to the FET provision and ISDS for FET claims

States are becoming more active in the ways in which they specify, address or exclude FET-type obligations in their treaties and submissions in ISDS. Dissatisfaction with and uncertainties about FET and its scope have also led some governments to exclude it from their treaties or from the scope of ISDS. Some important recent approaches are outlined below.

The MST-FET approach – express limitation of FET to the minimum standard of treatment under customary international law (MST). This approach has been used in a growing number of recent treaties, especially in treaties involving states from the Americas and Asia (Gaukrodger, 2017). In addition to using MST-FET, the Comprehensive and Progressive Trans-Pacific Partnership Agreement (2018) (CPTPP) requires the claimant to establish any asserted rule of MST-FET by demonstrating widespread state practice and opinio juris. (Article 9.6 (3)-(5), fns 15 and 17, Annex 9A). Evidence of these two components has rarely, if ever, been provided by claimants. This approach has since been replicated by other states (e.g., Australia-Indonesia CEPA (2019), Article 14.7). The NAFTA governments have further restricted MST-FET claims in the USMCA (see below).

The definition approach – stating what FET means or listing its element(s). Recent treaties negotiated by the European Union, China, France and Slovakia contain defined lists for the elements of FET. This approach can vary greatly depending on the nature of the list. Some lists include elements such as a denial of justice, manifest arbitrariness, fundamental breach of due process, targeted discrimination on manifestly wrongful grounds, and/or abusive treatment of investors. This approach likely results in a broader concept of FET than MST-FET, especially if state practice and opinio juris must be demonstrated to establish rules under MST-FET.

Exclusion of FET from ISDS, investment arbitration or from treaties. The recently-concluded USMCA (replacing NAFTA) includes MST-FET but generally excludes it from the scope of ISDS (except for a narrow class of cases involving certain government contracts) (Article 14.D.3). ISDS under the USMCA generally applies only to claims of direct expropriation and post-establishment discrimination (and only to Mexico-United States relations); only state-to-state dispute settlement (SSDS) is available for MST-FET claims. India’s Model BIT does not refer to FET and instead identifies specific elements; Brazil’s model treaty and recent treaties also exclude FET.

MFN treatment provisions in Thailand’s investment treaties may have a range of unintended consequences

Most of Thailand’s investment treaties provide for most-favoured nation (MFN) treatment. Like national treatment provisions, MFN clauses establish a relative standard: they require Thailand to treat covered investments at least as favourably as it treats comparable investments by investors from third countries. As with its FET provisions, the MFN obligations in Thailand’s investment treaties are often vague with little guidance on how they are to be interpreted or applied. More specific approaches to MFN provisions could improve predictability for the government, investors and arbitrators alike.

Recent investment treaty policies and debates over MFN have centred on several issues: (i) MFN clauses and treaty shopping; (ii) what constitute comparable investments; and (iii) the use of negative lists, carve-outs or conditions.

On the first issue, ISDS arbitral tribunals have frequently interpreted MFN clauses to allow claimants in ISDS cases to engage in “treaty shopping”.[20] These interpretations allow claimants to use MFN provisions to “import” substantive or procedural provisions from other investment treaties that they consider more favourable than the provision in the treaty under which their case is filed.[21] While beneficial to claimants, this can create uncertainty and also dilute the effect of investment treaty reforms. While MFN claims in trade law have centred on domestic law treatment of traders from different countries, most claimant attempts to use MFN in ISDS have sought to use the clause to access other treaty provisions.

Some governments have clarified in recent treaties that MFN provisions cannot be used to engage in treaty shopping. They have limited the application of MFN clauses to cases where government measures have been adopted or maintained under the third country treaty. Article 8.7(4) of the CETA between Canada, the EU and EU Member States, for example, clarifies that "substantive obligations in other international investment treaties do not in themselves constitute 'treatment', and thus cannot give rise to a breach of [the MFN provision], absent measures adopted or maintained by a Party pursuant to those obligations". The CETA also prohibits "treaty shopping" for procedural provisions. The USMCA similarly clarifies that treaty shopping is excluded under its MFN clause for both substantive and procedural matters (Article 14.D.3(1)(a)(i)(A), footnote 22): "For the purposes of this paragraph […] the "treatment" referred to in Article 14.5 (Most-Favored-Nation Treatment) excludes provisions in other international trade or investment agreements that establish international dispute resolution procedures or impose substantive obligations".

A second area of interest and government action with regard to MFN treatment provisions involves the determination of what investments or investors are comparable. Many older-style treaties do not provide any specificity on what comparable treatment may entail, leaving this issue to arbitral interpretations in ISDS. Some recent treaties provide that comparability requires "like circumstances". Further clarifications have also been added. For example, some recent clarifications have stated that deciding on whether there are "like circumstances" requires, among other things, consideration of whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.[22]

A third area of interest and government action with regard to MFN treatment provisions involves exclusions or limitations. Some recent treaties include negative lists of exclusions from MFN clauses in their investment chapters. Thus, a schedule may specify exceptions to MFN treatment for existing benefits granted under customs unions, other international treaties or specific domestic law schemes.

Some of Thailand's investment treaties include specifications or restrictions on MFN provisions that reflect these recent treaty practices and debates. ACIA (2009), the ASEAN-Hong Kong, China Investment Agreement (2017) and the ASEAN-China Investment Agreement (2010) clarify that MFN treatment does not extend to the ISDS provisions in other investment treaties but they do not expressly address the issue of "imports" of substantive clauses from other treaties, leaving the issue to arbitral interpretation. Several Thai treaties exempt the domestic BOI investment promotion regime from the MFN treatment provision.[23] Sectoral carve-outs are also used. Thailand's BITs with Sri Lanka (1996) and Chinese Taipei (1996) condition MFN treatment on reciprocal treatment by the treaty party. The Germany-Thailand BIT (2002) contains a non-exhaustive list of treatment that will be "deemed" less favourable.

At least three of Thailand's investment treaties do not contain an MFN provision: AANZFTA (2009), the ASEAN-India Investment Agreement (2014) and the ASEAN+ Japan agreement (2008) following the entry into force of the first protocol in 2020. Some governments have decided to remove MFN provisions from their investment treaties to avoid unintended interpretations of these clauses by arbitral tribunals in ISDS cases.[24]

ISDS is lightly regulated in most of Thailand's investment treaties, leaving substantial decision-making power to arbitrators or claimants

Many investment treaties allow covered foreign investors to bring claims against host states in investor-state arbitration, in addition or as an alternative to domestic remedies. Investor-state arbitration currently generally involves *ad hoc* arbitration tribunals that adjudicate disputes in an approach derived from international commercial arbitration.

ISDS is included in 39 of the 47 Thai investment treaties in force today. Thailand's first BITs concluded between 1960 and 1985 with five major capital exporters – China, Germany, the Netherlands, the United Kingdom and the United States – do not contain ISDS provisions. ISDS provisions in nine Thai BITs concluded between 1989 and 2000 are not effective because of Thailand's non-membership of ICSID. These BITs – with the Czech Republic, Egypt, Finland, Hungary, Korea, Peru, Poland, Sri Lanka and Switzerland – provide foreign investors with a single option for international arbitration under the ICSID Convention. As Thailand has never acceded to the ICSID Convention, ISDS is not currently available under these treaties. Five other Thai investment treaties – with Cambodia, Israel, the Philippines, Romania and Chinese Taipei – provide for ICSID and non-ICSID arbitration options but condition access to non-ICSID arbitration on the host country's agreement to arbitrate a given investment dispute after it arises. This means that, in practice, ISDS is not possible under these treaties without Thai government consent after a dispute has arisen. The first Thai investment treaty that provided access to non-ICSID investor-state arbitration *without* the need for prior government consent was the Canada-Thailand BIT (1997). Since 1997, almost every investment treaty concluded by Thailand allows for ISDS through non-ICSID forms of investor-state arbitration.

Recent treaty practice has both greater specification of ISDS and, in some cases, replacement of investor-state arbitration with more court-like systems. Treaties like the CPTPP and the EU-Canada CETA are among some recent treaties that have included investor-state arbitration reforms. Common features in these treaties include time limits for claims, possibilities for summary dismissal of unmeritorious claims, mandatory transparency requirements, provisions for non-disputing party participation and the possibility for joint interpretations of the treaty by the state parties that are binding on the arbitral tribunal. The USMCA contains many similar investor-state arbitration reforms but has reduced the scope for ISDS claims to direct expropriation and post-establishment discrimination (and only to Mexico-United States relations); only state-to-state dispute settlement (SSDS) is available for claims under other provisions, such as MST-FET claims. The European Union, which supports the concept of a multilateral investment court, has included court-like dispute settlement in its all its recent investment protection treaties.[25] Brazil's treaties omit ISDS and designate domestic entities ("National Focal Points") to act as an ombudsperson by evaluating investor grievances and proposing solutions to a Joint Committee comprised of government representatives from both states.[26] Under this model, state-state dispute settlement is also available if necessary. South Africa has terminated its BITs with European countries. Domestic legislation governs the claims of foreign investors against the government in domestic courts and provides for the possibility of case-by-case agreement to arbitration.

Many of Thailand's investment treaties regulate investor-state arbitration very lightly. They thus leave substantial decision-making power to arbitrators or investors and their legal counsel. The five ASEAN treaties that contain ISDS provisions in force today – ACIA and the ASEAN+ agreements with Australia/New Zealand, China, Japan, Korea and India – are notable exceptions. All of these contain somewhat more specification of ISDS, reflecting recent treaty practices that address investor-state arbitration reforms.

Aside from the ASEAN treaties, however, Thailand's investment treaties contain relatively few specifications regarding ISDS: (i) only two of Thailand's investment treaties prescribe time limits for covered investor claims[27] – a feature that is standard in domestic law systems and that has become common in investment treaties concluded since 2005; (ii) only one expressly provides for binding government interpretations of the treaty in ISDS cases;[28] (iii) none address transparency in ISDS; (iv) none provide a mechanism for summary dismissal of unmeritorious claims; (v) none provide a mechanism for consolidating two or more related ISDS claims; (vi) only two address the remedies that may be awarded by an arbitral tribunal;[29] and (vii) only ten contain express references to the governing law in ISDS cases and those treaties use a range of different formulations.

Many of Thailand's investment treaties therefore give claimants and their counsel substantial power over key procedural issues in addition to allowing them to choose when to claim. For example, in ISDS, the appointing authority in a case plays a key role notably because it chooses or influences the choice of the important chair of the typical three-person tribunal (Gaukrodger, 2018). Following NAFTA, many recent treaties provide for a single appointing authority for all cases. In contrast, many Thai treaties give claimants and their counsel a choice between different arbitration institutions at the time they file a claim. This allows them to choose or influence the choice of appointing authority and exacerbates the competition for cases between arbitration institutions (Gaukrodger, 2018). Even under ACIA, investors may decide whether to submit their dispute to domestic courts or tribunals, four arbitration fora specified in the treaty, “any other regional centre for arbitration in ASEAN” or any other arbitration institution that may be agreed by the disputing parties (Article 33(1)). One of Thailand’s investment treaties in force provides for a single effective forum for ISDS[30] (leaving aside those treaties that refer only to ICSID arbitration and therefore are ineffective references to ISDS), but the rest of Thailand’s treaties give power in this area to claimants and their counsel.

The current state of Thailand’s investment treaties may therefore result in exposure to unintended consequences of ISDS cases. Thailand’s 2013 model BIT seeks to address some of the issues for ISDS that are left unspecified in its existing investment treaties, but it does not address many others, including government interpretations, transparency, summary dismissal, consolidation or remedies. The government’s new model BIT set to be finalised in 2020 is expected to address a number of these issues.

Multilateral reform efforts for ISDS are underway in the UNCITRAL Commission’s Working Group III. Thailand’s written submissions in this process have outlined the government’s concerns with the cost and duration of ISDS arbitrations and the structural disadvantages for developing countries participating in ISDS. The government proposes to develop new arbitration rules that address concerns regarding ISDS, establish guidelines on prevention of investment disputes and establish an advisory centre for international investment law (UNCITRAL, 2019c; UNCITRAL, 2018b). Other possible reforms under consideration (no decisions have yet been reached) include both structural type reforms (a permanent multilateral investment court with government-selected judges or a permanent appellate tribunal) as well as more incremental reforms such as a code of conduct for arbitrators or adjudicators.

Thailand may wish to consider the costs and benefits of ISDS more broadly alongside potential alternatives or complementary steps. These might include *ad hoc* arbitration agreements with specific investors or the possibility for investors to purchase political risk insurance from the World Bank’s Multilateral Investment Guarantee Agency that Thailand joined as a member in 1996. The government may also wish to consider whether the inclusion of ISDS can be leveraged to achieve Thailand’s objectives in other aspects of the treaty negotiations.

Other possible aspects of investment treaty reform

Clearer specification of investment protection provisions would help to reflect government intent more effectively

Specifications on key provisions in investment treaties should reflect policy choices informed by Thailand’s priorities. Policymakers need to consider the costs and benefits of these choices and their potential impact on foreign and domestic investors, together with Thailand’s legitimate regulatory interests and potential exposure to ISDS claims and damages. The government should continue to implement its plans to assess and where appropriate update its investment treaties to bring them in line with the government’s current priorities. Depending on the context and treaty language, it may be possible to achieve these goals through joint interpretations agreed with treaty partners. In other cases, treaty amendments may be required. Replacement of older investment treaties by consent may also be appropriate in some cases.

The government’s experiences with the COVID-19 pandemic may shape how it views key treaty provisions or interpretations as well as the appropriate balance between investor protections and the right to regulate.

Measures taken by governments to protect their societies and economies during the pandemic affect companies and investors. Investment treaties should allow governments sufficient policy space to respond effectively to the crisis and to take vital measures such as securing quick access to essential goods and services. Governments have been addressing the balance between investment protection and the right to regulate in investment treaties through analysis and discussion at the OECD (OECD, 2020). The government may wish to reflect on its own experiences during the crisis when continuing its plans to assess and where appropriate update its investment treaties to reflect current priorities.

Investment treaties can be used as tools to liberalise domestic investment regimes

While liberalisation provisions are common features of international trade agreements, they have been much less common in BITs. They have become more frequent components of investment chapters in broader trade and investment treaties. Investment treaties can be used to liberalise investment policy by facilitating the making or establishment of new investments (Pohl, 2018). This can be achieved by extending the national treatment (NT) and MFN treatment standards to investors seeking to make investments (i.e. the pre-establishment phase of an investment) or by expressly prohibiting measures that block or impede market access.[31]

Seven of Thailand’s investment treaties grant so-called pre-establishment NT or MFN treatment, or both, to investors.[32] The provisions are generally subject to SSDS, like in trade agreements; none of them would allow an investor to bring an ISDS claim.[33] The market access obligations in these seven treaties are accompanied by certain exclusions and reservations (Box 8.2).

Thailand may wish to consider whether entering into liberalisation obligations aligns with its policy goals when signing new investment treaties in the future, especially bilateral agreements signed outside the ASEAN framework.

Box 8.2. Negative and positive list-approaches to NT and MFN exceptions

When countries grant national and/or most-favoured nation treatment, whether pre- or post-establishment, they typically do so subject to exceptions or reservations adopted under one of two different approaches.

A ***negative list-approach*** typically provides that MFN and NT are granted subject to specific exceptions or reservations (negative lists) that are often contained in detailed annexes to the treaty. Article 9 of the ASEAN-Korea Investment Agreement, for example, provides that the governments may adopt and maintain measures in certain sectors that do not confirm with the MFN and NT provisions and identify sectors in a Schedule of Reservations for which they wish to reserve full policy space.

A ***positive-list approach*** involves limiting the application of MFN and NT liberalisation provisions to specific identified sectors (positive lists). Article 3(3) of ACIA is an example of a positive list. Generally, the negative list-approach is seen as more conducive to investment liberalisation particularly over time. New areas of economic activity are not covered by negative lists.

Addressing the unique approach to claims for reflective loss in ISDS

Thailand should continue to engage in multilateral fora such as at the OECD and UNCITRAL to develop proposals to address the unique approach to claims for shareholders’ reflective loss in ISDS.

Shareholders incur reflective loss if a company in which they hold shares suffers a loss that results, in turn, in the shareholders suffering a commensurate loss, typically a loss in value of the shares. Domestic legal systems around the world generally prohibit claims for reflective loss. Where a company is injured, the claim generally belongs to the directly-injured company rather than the shareholders of that company. This rule protects company creditors and all shareholders, lowering their risks and encouraging them to provide capital to companies. It also achieves judicial economy by limiting claims, avoiding inconsistent outcomes, facilitating amicable settlement, and precluding double recovery by the company and shareholders for the same loss.

In contrast to this domestic law approach, many existing investment treaties have been interpreted to allow ISDS claims by covered shareholders for losses incurred by companies in which they own shares. This greatly increases the chances of multiple claims against the government for the same alleged loss. For example, one or more foreign nationals who are minority shareholders in a local Thai company could bring an ISDS claim against the government under an investment treaty while the same local Thai company could bring a separate claim against the government under a government contract or in domestic courts.

Governments at the OECD have noted since 2013 that the availability of reflective loss claims in ISDS raises a broad range of policy issues including the risk of multiple legal claims, the risk of inconsistent decisions, increased costs defending legal claims, exposure to double recovery, the impact on predictability, hindering settlement, facilitating treaty shopping, and upsetting the hierarchy of claims so that a claimant gets better treatment than under normal legal principles (OECD, 2016; Gaukrodger, 2014a, 2014b, 2013; Summary of 19th FOI Roundtable, October 2013, pp. 12-19; Summary of 18th FOI Roundtable, March 2013, pp. 4-9). Ongoing discussions at UNCITRAL's Working Group III on ISDS Reform are addressing possible reforms to address these issues, which were underlined in a recent UNCITRAL Secretariat note (UNCITRAL, 2019d). Given that the current approach towards reflective loss in ISDS provides claimants with exceptional benefits and greatly expands the number of actual and potential ISDS cases, however, only government-led reform is likely to address the issues.

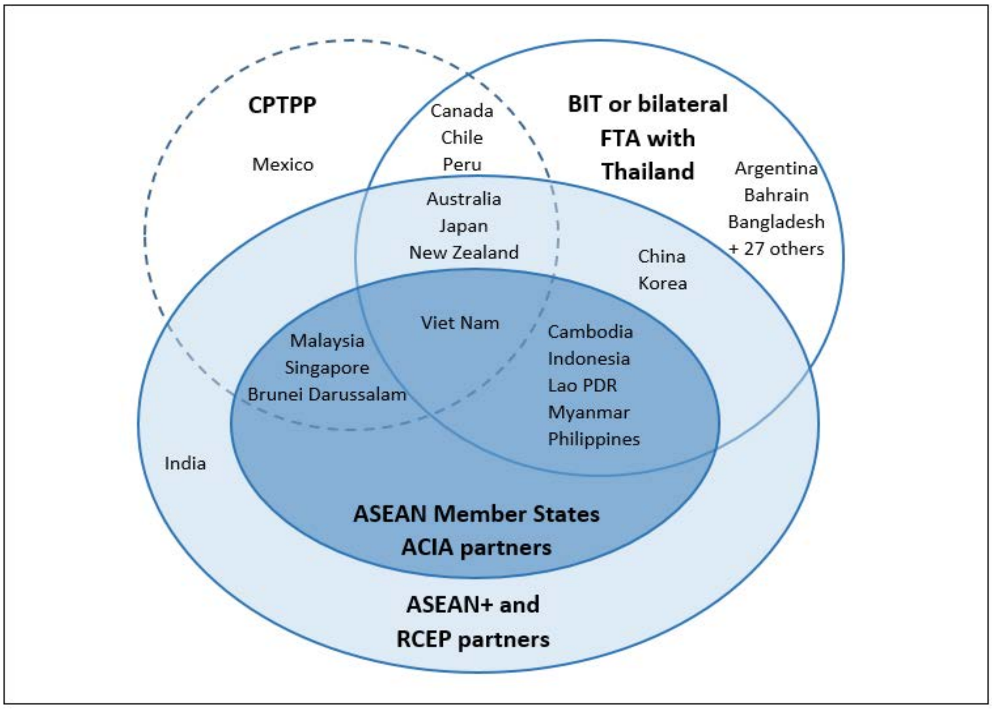
Evaluating overlaps between investment treaties

Thailand has two investment treaties – ACIA and an older-style BIT – in force with six of its nine ASEAN partners (Cambodia, Indonesia, Laos PDR, Myanmar, the Philippines and Viet Nam). It is also a party to ASEAN+ agreements in force with Australia, China, Japan, Korea and New Zealand as well as BITs or bilateral trade and investment agreements with these same partners. All of these countries except India have also concluded RCEP in November 2020 (see Figure 8.3).

Overlapping investment treaties that apply to investments by investors from the same country may raise some policy concerns. As a general matter, Thailand should strive to minimise inefficient inconsistencies between international obligations entered into with different countries. Investors from countries with two or more treaties in force may be able to rely on more favourably-worded provisions in Thailand's older BITs in their dealings with the government or in ISDS disputes. This approach could also potentially undermine reform efforts in some of Thailand's newer treaties if investors can circumvent newer, more nuanced investment treaties by relying older BITs that are still in force.

Any significant differences between Thailand's BITs, ACIA and the ASEAN+ agreements are also unlikely to contribute to the goals of ASEAN member states in strengthening common rules on investment protection and liberalisation at a regional level. Thailand may wish to engage with these treaty partners to review whether their respective international obligations reflect current priorities. Depending on the context and treaty language, it may be possible to achieve these goals through joint interpretations agreed with treaty partners. In other cases, treaty amendments may be required.

Figure 8.3. Overview of Thailand's overlapping investment treaty relationships



Note: This figure includes the Parties to the Comprehensive and Progressive Trans-Pacific Partnership Agreement (2018) (CPTPP), which is marked with the dashed line for illustrative purposes only. As of October 2020, Thailand is not a party to the CPTPP. Underlined text in this figure denotes countries that have two investment treaties in force with Thailand.
Source: OECD investment treaty database.

Despite the concerns that may arise with overlapping treaties, some governments may consider that they need to provide certain extra incentives or guarantees to some treaty partners over others in order to attract FDI. This may be because they expect that investors from those countries are less likely to invest their capital in the absence of such treatment or assess that the broader benefits associated with attracting FDI from those countries are particularly lucrative. Some governments may also consider that similar provisions in different treaties, while framed differently, are likely to be interpreted in a consistent way. The balance between these interests and assessments is a delicate one and may evolve over time.

Evaluating overlaps between investment treaties and domestic law

The scope of investor protections and obligations under Thailand's domestic laws and its investment treaties overlap in some respects. Some overlaps appear to give rise to inconsistencies in approach. Thailand's domestic laws do not contain guarantees of post-establishment non-discrimination and FET that appear in Thailand's investment treaties. Likewise, the protection from expropriation is narrower under domestic law than under many of Thailand's investment treaties. In terms of dispute resolution, many of Thailand's investment treaties provide the government's consent to investor-state arbitration which is not provided under domestic laws. Investment contracts that the government enters into with specific investors could create an additional layer of contractual rights and obligations for specific investors.

Differences between the domestic laws on investor protection and investment treaties may create more favourable legal regimes that apply to some investors and not others based on their nationality. It may also prompt some investors to structure their investments through a company in one of Thailand's treaty partner countries to seek to benefit from treaty protections and/or treaty-based ISDS if they perceive these to be more favourable than protections and dispute resolution options under domestic laws. The government may therefore wish to conduct a gap analysis between domestic laws on investor protection and investment treaty provisions to consider the implications of any differences and ensure that these different regimes continue to reflect the government's current priorities.

Ensuring policy space for government regulation

Thailand may wish to consider ways in which it can guarantee a higher degree of legitimate regulatory freedom and attract sustainable, quality FDI through its investment treaties. These concerns would appear to align with the Thailand 4.0 economic model and the emphasis on sustainability as part of its role as chair of ASEAN in 2019.

Governments can use a range of techniques to affect the balance between the right to regulate and investor protections under investment treaties (Gaukrodger, 2017a). The most obvious one involves decisions about whether to include or exclude particular provisions, whether to draft them narrowly or broadly, precisely or in vague terms. The most important provisions in this regard are likely to be those most often at issue in investor claims such as the FET provision. A second area of obvious interest is express provisions addressing the right to regulate, although some have pointed to risks that broad clauses to protect the right to regulate could create new areas of possible misinterpretation.

A partial list of additional techniques used recently to allow for greater policy space would likely include the following: clarifications of treaty language; interpretative statements; joint interpretive statements; general exceptions; specific exceptions; reservations; conditions precedent to consent to arbitration; standards of review; limits or exclusions of MFN clauses; or limits on injunctions, damages or other remedies. Reforms to ISDS provisions or consideration of alternatives such as a court-like model may also be relevant considerations.

Opportunities for investment treaties to address sustainable development and responsible business conduct

Thailand may wish to reconsider its approach to investor responsibilities in investment treaties, including in relation to sustainable development and responsible business conduct (RBC). This could be a way of strengthening and complementing Thailand's First National Action Plan on Business and Human Rights (2019-2022) which was published in October 2019 following approval by the Cabinet of Ministers (see Chapter 9 on Thailand's approach to RBC). Addressing business and human rights (BHR) and RBC issues in investment treaties may be one way of improving policy coherence across government on these issues although governments have taken a range of different approaches on whether and how to address RBC/BHR issues in investment treaties.

The OECD's FOI Roundtable is currently considering how trade and investment treaties can affect business responsibilities including through their impact on policy space for governments, their provisions that buttress domestic law or its enforcement, or their provisions that directly address business by, for example, encouraging observance of RBC standards or establishing conditions for access to investment treaty benefits (Gaukrodger, 2020).

Ten of Thailand's investment treaties make express references to RBC-related objectives. Many of these treaties contain language establishing that non-discriminatory environmental measures taken in order to protect public welfare objectives do not constitute indirect expropriation or language aimed at preserving space for policy-making in areas important to RBC.[34] Others clarify the parties' understanding that it is inappropriate to encourage investment by relaxing environmental or health measures[35] or reaffirm the parties' commitments to the fight against corruption.[36]

Investment treaties concluded by some other governments impose obligations on investors to uphold human rights and maintain an environmental management system,[37] exclude investments procured by corruption from the scope of protections under the treaty[38] or exclude the possibility for ISDS in relation to government measures relating to the treaty's environmental and labour provisions.[39] Other examples refer to the parties' commitments to implement international standards related to RBC,[40] recognise that investments should contribute to the economic development of the host state[41] or recognise the importance of requiring companies to respect corporate social responsibility norms (Gordon et. al., 2014).[42]

Thailand may wish to consider whether and how investor responsibilities might be included in more of its existing investment treaties. Possible options may include cross-referring to domestic law RBC obligations or ensuring that treaty protections are restricted to investments made in accordance with Thai law. Some of Thailand's treaties stipulate expressly that only investments made in accordance with host state laws will be protected under the treaty (see, e.g., Bahrain-Thailand BIT (2002), Article 2; Thailand-Romania BIT (1993), Article 1(1)). Such requirements may incentivise investors to respect domestic law obligations by conditioning access to treaty protections on compliance. The issue of whether such a requirement is implicit in investment treaties appears uncertain in light of inconsistent ISDS decisions, but an express clause would remove doubt in this regard.

Developing approaches to prevent ISDS claims and manage them effectively if they arise

The government is prioritising the development of strategies for prevention and early settlement of investment-related disputes and its approach to case management of ISDS cases. In 2019, it established the Committee on the Protection of International Investments in 2019.[43] The Committee is chaired by the Deputy Prime Minister and comprises of ministers and other high-level officials in various government departments and agencies. The Committee's work is funded from the budget of the Ministry of Foreign Affairs. The functions of the Committee can be divided into three broad areas:

- ***dispute prevention*** (by serving as a permanent advisory body for line agencies on potential investment disputes and opportunities for settlement or compromise);
- ***policy coherence*** (proposing and reviewing policies, strategies, work plans and positions regarding reform options for existing treaties and negotiations regarding new treaties or treaty amendments/interpretations); and
- ***dispute settlement*** (supervising the government's defence of investor-state arbitrations that might arise in the future, including through establishing a dedicated Taskforce to report to the Committee and make proposals for the Council of Ministers regarding the handling of individual cases).

Other OECD governments have established similar committees and reported successful outcomes with respect to dispute prevention. The government should monitor and measure the outcomes of this Committee to ensure that it is functioning effectively in practice. The Committee's role as a centralising body for investment treaty policy is particularly commendable and could serve a valuable role in harmonising treaty practices in line with existing domestic laws and international good practices. The Committee may wish to consider whether it could play a role in developing policies with respect to harmonising and proposing updates to domestic laws on investment protection and dispute resolution if its mandate were to expand in the future.

Thailand's 2013 model BIT provides for good offices, conciliation and mediation regarding investment disputes but relatively few of Thailand's investment treaties in force envisage non-binding dispute resolution besides pre-arbitration negotiation. The government has recently made proposals in this respect as part of the UNCITRAL Working Group III process, including for preparation of guidelines on how states can manage investment disputes, improvement of capacity-building for governments on dispute prevention, renewed focus on the role for conciliation and mediation in investment disputes and the establishment of a low-cost legal advisory centre for international investment law (UNCITRAL, 2019c; UNCITRAL, 2018b).

Aside from participating in inter-governmental fora on these topics, the government may wish to consider taking certain steps at a domestic level. In terms of dispute prevention, it may be worth exploring options to build awareness within government ministries, agencies and local or sub-national government entities regarding Thailand's obligations under investment treaties and the potential impact that government decisions may have on investor rights under these treaties. Internal written guidelines or a handbook for relevant ministries, departments and line agencies could be a useful way to disseminate information and establish best practices for interactions with investors to minimise the risk of ISDS claims. Such materials could also help to encourage continuity of institutional knowledge as personnel changes occur over time. As part of existing capacity-raising efforts for treaty negotiators and line agencies, Thailand co-hosted the 13th Annual Forum for Investment Negotiators with the International Institute for Sustainable Development (IISD). The Forum was held virtually from 3-11 September 2020 and focused on investment policy-making during COVID-19 and beyond. Such efforts should be encouraged to continue.

Thailand may also wish to explore ways to share and learn from its experiences with ISDS and those of other governments. Several states that have been frequent respondents in ISDS cases – including Argentina, Spain, the United States, Canada and Mexico – have developed dedicated teams of government lawyers to advise the government on investment disputes. Evaluating investor claims candidly before any form of binding arbitration is initiated can be an important step in preventing a protracted and costly legal process.

Thailand may also wish to consider drawing on examples of institutional frameworks for the prevention of investment disputes in other countries. At a domestic level, some countries, such as Colombia and Peru, have adopted comprehensive legislative and regulatory frameworks to encourage the early detection and resolution of investment disputes (OECD, 2018b; Joubin-Bret, 2015). Other countries, such as Chile, have opted for an informal prevention system where sectoral agencies directly manage disputes with investors. As noted above, Brazil does not include ISDS in its investment treaties but instead establishes with each treaty partner a Focal Point or ombudsman within each government to address investor grievances, with a Joint Committee of government representatives to oversee the administration of the agreement. Korea has also had a successful track-record of early dispute resolution with its Foreign Investment Ombudsman since it was established in 1999 (Nicolas, Thomsen and Bang, 2013).

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Annex 8.A. Thailand's international investment agreements

Annex Table 8.A.1. Bilateral investment treaties in force

No	Treaty partner	Date of signature	Date of entry into force
1	Argentina	18/02/2000	07/03/2002
2	Bahrain	21/05/2002	17/07/2002
3	Bangladesh	09/07/2002	12/01/2003
4	Belgium/Luxembourg	12/06/2002	19/09/2004
5	Bulgaria	11/09/2003	12/08/2004
6	Cambodia	29/03/1995	18/04/1997
7	Canada	17/01/1997	24/09/1998
8	China	12/03/1985	14/12/1985
9	Croatia	18/02/2000	10/08/2005
10	Czech Republic	12/02/1994	04/05/1995
11	Democratic People's Republic of Korea	01/03/2002	24/05/2002
12	Egypt	18/02/2000	27/02/2002
13	Finland	18/03/1994	18/03/1996
14	Germany	24/06/2002	20/10/2004
15	Hong Kong, China	19/11/2005	12/04/2006
16	Hungary	18/10/1991	18/10/1991
17	Indonesia	17/02/1998	05/11/1998
18	Israel	18/02/2000	28/08/2003
19	Jordan	15/12/2005	25/11/2007
20	Korea	24/03/1989	29/09/1989
21	Lao PDR	22/08/1990	07/12/1990
22	Myanmar	14/03/2008	08/06/2012
23	Netherlands	06/06/1972	03/03/1973
24	Peru	15/11/1991	15/11/1991
25	Philippines	30/09/1995	06/09/1996
26	Poland	18/12/1992	10/08/1993
27	Romania	30/04/1993	20/08/1994
28	Slovenia	18/02/2000	20/10/2002
29	Sri Lanka	03/01/1996	14/05/1996
30	Sweden	18/02/2000	23/11/2000
31	Switzerland	17/11/1997	21/07/1999
32	Chinese Taipei	30/04/1996	30/04/1996
33	Turkey	24/06/2005	21/07/2010
34	United Arab Emirates	23/02/2015	16/12/2016
35	United Kingdom	28/11/1978	11/08/1979

No	Treaty partner	Date of signature	Date of entry into force
36	United States	29/05/1966	06/08/1968
37	Viet Nam	30/10/1991	07/02/1992

Note: It is difficult to be precise about the exact status of Thailand's BITs due to some inconsistencies in publicly-available information, especially entry into force dates. The Ministry of Foreign Affairs' (MFA) Department of Treaties and Legal Affairs (DTLA) publishes an annual fact sheet on Thailand's BITs. The full texts of Thailand's investment treaties (including in some cases an exchange of letters to document entry into force) are available for download from the MFA's treaty database: see Ministry of Foreign Affairs 2019a, 2019b; Ministry of Commerce (2019). MFA's Department of International Economy also publishes general background information in Thai on investor protections under investment treaties (Ministry of Foreign Affairs, 2019c). Some of the information published by MFA is inconsistent with information published by Thailand's treaty partners, in particular with respect to dates of signature and entry into force. For example, the fact sheet indicates that Thailand's revised BIT with Germany entered into force on 20 October 2006 while Germany's Ministry of Economy and Energy treaty database indicates that it took effect on 20 October 2004. Similarly, the fact sheet indicates that the Thailand-United Kingdom BIT was signed on 26 May 1978 while the UK Foreign & Commonwealth Office treaty database indicates that the BIT was signed on 28 November 1978.
Source: Ministry of Foreign Affairs; OECD treaty database.

Annex Table 8.A.2. Bilateral investment treaties signed but not in force

No	Treaty partner	Date of signature	Comments
1	Bangladesh	30/03/1988	Never in force; replaced by newer treaty
2	Germany	13/12/1961	Initially came into force on 10/04/1965; replaced by newer treaty
3	India	10/07/2000	Initially came into force on 13/07/2001; terminated with effect from 22/03/2017 following unilateral denunciation by India
4	Tajikistan	09/08/2005	-
5	Tanzania	30/07/2013	-
6	Zimbabwe	18/02/2000	-

Source: Ministry of Foreign Affairs; OECD treaty database.

Annex Table 8.A.3. Bilateral trade and investment agreements in force

No	Treaty partner	Date of signature	Date of entry into force
1	Australia-Thailand Free Trade Agreement	05/07/2004	01/01/2005
2	Japan-Thailand Economic Partnership Agreement	03/04/2007	01/11/2007
3	New Zealand-Thailand Closer Economic Partnership Agreement	19/04/2005	01/07/2005

Source: Ministry of Foreign Affairs; OECD treaty database.

Annex Table 8.A.4. Plurilateral agreements containing investment protections, investment liberalisation provisions and/or ISDS

No	Treaty	Date of signature for Thailand	Date of entry into force	Date of entry into force for Thailand
1	Regional Comprehensive Economic Partnership Agreement	15 November 2020	-	-
2	ASEAN-Hong Kong, China SAR Investment Agreement	12/11/2017	17/06/2019	17/06/2019
3	ASEAN-India Investment	12/11/2014	-	-

No	Treaty	Date of signature for Thailand	Date of entry into force	Date of entry into force for Thailand
	Agreement			
4	ASEAN-China Investment Agreement	15/08/2009	01/01/2010	01/01/2010
5	ASEAN-Korea Investment Agreement	02/06/2009	01/09/2009	01/09/2009
6	ASEAN-Australia/New Zealand Free Trade Agreement	27/02/2009	10/01/2010	12/03/2010
7	ASEAN Comprehensive Investment Agreement (ACIA)	26/02/2009	09/03/2012	09/03/2012
8	ASEAN-Japan Economic Partnership Agreement	28/03/2008	01/12/2008	01/06/2009
9	First Protocol to the ASEAN-Japan Economic Partnership Agreement (including provisions on investment protection)	27/02/2019 (Japan); March and April 2019 (ASEAN members)	01/08/2020	01/08/2020
10	ASEAN Investment Agreement	15/12/1987	02/08/1988 (terminated and replaced by ACIA on 24/02/2012)	02/08/1988 (terminated and replaced by ACIA on 24/02/2012)

Source: Ministry of Foreign Affairs; OECD treaty database.

Notes

[1] A bilateral trade agreement with Chile (2013) does not contain an investment chapter but the parties agreed to continue their negotiations regarding a future possible investment chapter. Thailand has also signed several other bilateral treaties relating to investment cooperation that do not contain investment protections or ISDS. These include framework agreements with the European Economic Community (1981), Cambodia (2001), Bahrain (2002), Peru (2003), India (2003), Bhutan (2004), Jordan (2004), Maldives (2013) and several ASEAN+ partners as well as memoranda of understanding with Korea (2003), Sri Lanka (2004) and Gambia (2006).

[2] The coverage is assessed based on FDI stock data (2017 or, where 2017 data was unavailable, data of preceding years, giving preference to more recent data, based on data released by OECD and IMF) and investment treaties in force in September 2019. For several reasons, reported FDI stock data is not a valid measure for assets that benefit from treaty protections (Pohl, 2018) and available data does not allow to determine ultimate ownership of assets. The proportions of FDI stock data may nonetheless serve as a rough approximation of stock held by the immediate investing country to illustrate features and outcomes of Thailand’s past investment treaty policies.

[3] Japan-Thailand EPA (2007); Netherlands-Thailand BIT (1972); Thailand’s bilateral relationship with Singapore under the ASEAN Comprehensive Investment Agreement (2009); and the Thailand-US Treaty of Amity (1966).

[4] Thailand's relationship with Australia under AANZFTA (2009); Belgium/Luxembourg-Thailand BIT (2002); China-Thailand BIT (1985); Chinese Taipei-Thailand BIT (1996); Germany-Thailand BIT (2002); Hong Kong (China)-Thailand BIT (2005); Korea-Thailand BIT (1989); Thailand's relationship with Malaysia under ACIA (2009); Sweden-Thailand BIT (2000); Switzerland-Thailand BIT (1997); and Thailand-United Kingdom BIT (1978).

[5] Argentina, Bahrain, Bangladesh, Brunei Darussalam, Bulgaria, Cambodia, Canada, Croatia, Czech Republic, Egypt, Finland, Hungary, Indonesia, Israel, Jordan, Laos PDR, Myanmar, New Zealand, Peru, Philippines, Poland, Romania, Slovenia, Sri Lanka, Turkey, United Arab Emirates and Viet Nam.

[6] Argentina, Bahrain, Bangladesh, Brunei Darussalam, Bulgaria, Chinese Taipei, Croatia, Czech Republic, Egypt, Finland, Hungary, Israel, Jordan, Korea, New Zealand, Peru, Poland, Romania, Slovenia, Sri Lanka, Sweden, Switzerland, Turkey and United Arab Emirates.

[7] Argentina, Bahrain, Bangladesh, Brunei Darussalam, Bulgaria, Croatia, Czech Republic, Egypt, Finland, Hungary, Israel, Jordan, New Zealand, Peru, Poland, Romania, Slovenia, Sri Lanka, Turkey and United Arab Emirates.

[8] The comparison of GDP per capita in PPP terms between Thailand and its respective treaty partners was determined for the year when the treaty was concluded; where this data were not available, data for the earliest year available for the country-pair were used. The values of per capita GDP PPP in current terms were taken from the World Bank's World Development Indicators as of mid-2019.

[9] The agreement between Thailand and Chile does not contain an investment chapter. The parties plan to negotiate on investment issues in the future.

[10] For further details, see: https://www.iisd.org/event/international-investment-agreement-reform-modernizing-existing-stock-treaties.

[11] See generally, *Walter Bau AG (in liquidation) v Kingdom of Thailand*, UNCITRAL, Award, 1 July 2009.

[12] Kingsgate Consolidated Limited, "Commencement of Arbitration Against Thailand", Media Release, 2 November 2017, http://www.asx.com.au/asxpdf/20171102/pdf/43nx46y27z949y.pdf (accessed 24 September 2019); IA Reporter, "Australian investor makes good on BIT arbitration threat against Thailand – and also takes its political risk insurer to court", 2 November 2017.

[13] IA Reporter, "In echoes of Walter Bau case, shareholders in a Thai project disagree among themselves as to wisdom of using investment treaty arbitration – this time in relation to controversial gold mine", 4 September 2015.

[14] IA Reporter, "Boonsom Boonyanit v. Malaysia: Rare dispute under terminated Asean investment treaty is resolved", 23 June 2019.

[15] IA Reporter, "Lignite company threatens renewed arbitration claim against Laos", 21 April 2020.

[16] Global Arbitration Reporter, "Egyptian court hears billion-dollar BIT claim", 20 July 2020.

[17] The only exception is the New Zealand-Thailand Closer Economic Partnership Agreement (2005). Given that investors from New Zealand may rely on FET protection from Thailand under AANZFTA, all of Thailand's investment treaty relationships involve FET guarantees. Thailand's first BIT with Germany (1961) omitted the FET standard but the revised Germany-Thailand BIT (2002) currently in force refers to FET.

[18] The Tanzania-Thailand BIT (2013), which both Parties have signed but not brought into force, also specifies that FET does not require any treatment in addition to the customary international law standard for the treatment of aliens.

[19] Gaukrodger, D. (2016) (reviewing the applicable law on joint interpretations of investment treaties without express provisions on the issue); Gordon, K. and Pohl, J. (2015). For a recent example of a joint interpretation, see the Joint Interpretative Declaration between Columbia and India (2018) regarding the Columbia-India BIT (2009).

[20] This phrase is used broadly herein to describe the power for a beneficial owner of an investment to choose between investment treaties or between provisions of different investment treaties. See further detail on treaty shopping below.

[21] For a recent discussion of the uncertainty surrounding the interpretation of MFN clauses in ISDS, see Batifort, S. and Benton Heath, J. (2018) "The New Debate on the Interpretation of MFN Clauses in Investment Treaties: Putting the Brakes on Multilateralization", *American Journal of International Law*, Volume 111, Issue 4 (October 2017), pp. 873-913.

[22] See, for example, United States-Mexico-Canada Agreement (2018), Article 14.5(4) ("For greater certainty, whether treatment is accorded in 'like circumstances' under this Article depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.")

[23] Thailand's BITs with Argentina, Bangladesh, Cambodia, China, Czech Republic, Egypt, Finland, Hong Kong (China), Hungary, Korea, Peru, Poland, Romania, Sri Lanka and the United Kingdom create an exception for persons and companies with the status of a "promoted person" under the Investment Promotion Act 1977.

[24] India omitted MFN from its 2015 model BIT in response to what it considered was an unduly expansive interpretation of an MFN provision by an arbitral tribunal. In the *White Industries* case, the arbitral tribunal allowed the investor to import an "effective means" clause from a third-party treaty via the MFN clause in the India-Australia BIT with no analysis of how it considered the relevant MFN clause to operate: *White Industries Australia Limited v. Republic of India*, UNCITRAL, *ad hoc*, Final Award, 30 November 2011, paras 11.2.1-11.2.9.

[25] See EU-Canada CETA (2016); EU-Singapore Investment Protection Agreement (2018); EU-Mexico Agreement (2018); EU-Viet Nam Investment Protection Agreement (2019).

[26] See, for example, Brazil-Chile FTA (2018), Article 15; Brazil-Angola BIT (2015), Article 15.

[27] Canada-Thailand BIT (1997), Article XIII(3); Japan-Thailand EPA (2007), Article 106(6). The Tanzania-Thailand BIT (2013) also contains a time limits for ISDS claims but this treaty is not currently in force.

[28] Thailand-United Arab Emirates (2015), Articles 10(3), 14. The Tanzania-Thailand BIT (2013) also provides for binding joint interpretations by the contracting governments but this treaty is not currently in force.

[29] Canada-Thailand BIT (1997), Article XIII(8), (9); Japan-Thailand EPA (2007), Article 106(12).

[30] Hong Kong, China-Thailand BIT (2005), Article 8 (ad hoc arbitration under the UNCITRAL Arbitration Rules).

[31] See, for example, EU-Canada CETA (2016), Article 8.4; EU-Vietnam FTA (2018), Article 8.4.

[32] Japan-Thailand EPA (2007), Article 93(1); ACIA, Articles 3(3), 5, 6; ASEAN-Korea Investment Agreement, Articles 3, 4; AANZFTA, Chapter 11, Article 4; ASEAN-India Investment Agreement, Article 3; Thailand-Australia FTA (2004), Article 904; Thailand-New Zealand FTA (2005), Article 9.6; Japan-ASEAN EPA (2008), Article 51.3 (after the entry into force of the first protocol in 2020).

[33] Each of these treaties exclude pre-establishment NT and MFN from the scope of the ISDS provisions in those agreements by allowing claims to be brought by investors only in relation to loss or damage suffered "with respect to the management, conduct, operation or sale or other disposition" of a covered investment (c.f. admission or establishment): ACIA, Article 32(a); ASEAN-Korea Investment Agreement, Article 18(1); AANZFTA, Chapter 11, Article 20(a); ASEAN-India Investment Agreement, Article 20(1); Japan-Thailand EPA, Article 106(15)(c); Japan-ASEAN EPA (2008), Article 51.13(6) (after the entry into force of the first protocol in 2020).

[34] AANZFTA (in an annex to the investment chapter); ACIA (Article 17 and Annex 2); ASEAN-China Investment Agreement (Article 16); ASEAN-Hong Kong (China) Investment Agreement (Article 9 and Annex 2); ASEAN-India Investment Agreement (Articles 8(9) and 21); ASEAN-Korea Investment Agreement (Article 20); Australia-Thailand FTA (2004) (in an annex to the investment chapter); Canada-Thailand BIT (1997) (Article XVII); Japan-Thailand EPA (2007); and New Zealand-Thailand CEPA (preamble and Chapter 15.2). Articles 7 and 111 of the also contain language that seeks to reinforce the parties' commitment to the fight against corruption and discourage them from loosening their environmental or labour regulations in order to attract investment.

[35] Japan-Thailand EPA (2007), Article 111. For other examples, see Japan-Viet Nam BIT (2003), Article 21; Netherlands Model BIT (2018), Article 6(3); Argentina-United Arab Emirates BIT (2018), Article 12.

[36] Japan-Thailand EPA (2007), Article 7.

[37] Morocco-Nigeria BIT (2016), Article 18.

[38] See, e.g., EU-Canada CETA, Article 8.18(3); Brazil-Chile FTA (2018), Article 8.16.

[39] See, e.g., Belgium/Luxembourg-Colombia BIT (2009), Articles VII(5) and VIII(4).

[40] See, e.g., Chile-United States FTA (2003), Article 18.1.

[41] See, e.g. China-Peru FTA (2009), which states in the preamble that the State Parties "RECOGNIZE that this Agreement should be implemented with a view toward raising the standard of living, creating new employment opportunities, reducing poverty and […]".

[42] See, e.g. Australia-Indonesia CEPA (2019), Article 14.17; United States-Mexico-Canada Agreement (2018), Article 14.17; Brazil-Chile FTA (2018), Article 8.16.

[43] See Regulation of the Office of the Prime Minister on Work Relating to the Protection of International Investments B.E. 2562 (2019).

9 Promoting and enabling responsible business conduct

This chapter reflects Thailand's achievements in promoting and enabling responsible business conduct and includes recommendations on how promoting RBC is a strategic choice for upgrading in global supply chains and encouraging the private sector contribution to the SDGs. This chapter is part of a broader project on Responsible Supply Chains in Asia funded by the European Union.

Summary

Promoting and enabling responsible business conduct (RBC) is of central interest to policy-makers wishing to attract and keep investment and ensure that business activity contributes to broader value creation and sustainable development. RBC expectations are prevalent throughout global value chains and refer to the expectation that all businesses – regardless of their legal status, size, ownership structure or sector – avoid and address negative consequences of their operations, while contributing to sustainable development where they operate. RBC is an entry point for any company that wishes to contribute to the Sustainable Development Goals (SDGs) or to achieve specific economic and sustainability outcomes.

The COVID-19 crisis has exposed significant vulnerabilities in company operations in global value chains, including as related to disaster preparedness and supply chain continuity and resilience. Evidence has already shown that companies that are responsible are better able to respond to COVID-19. An RBC lens can help them to make more balanced decisions, while ensuring that they avoid creating further risks to people, planet and society – or contribute to further destabilising supply chains down the line. Promoting and enabling RBC as part of overall COVID-19 policy responses will be essential for ensuring coherence between their government recovery policies and their expectations of how businesses should contribute in this regard. Thailand is a regional leader on RBC. Several initiatives have been implemented over the course of the last few years. Notably, on 29 October 2019, Thailand became the first country in Asia to adopt a standalone *National Action Plan on Business and Human Rights (2019-2022)* (NAP). RBC-related activities in Thailand have also been undertaken by the private sector and civil society. Nevertheless, while the efforts by the Thai government to set RBC policy direction are commendable, the real test will be in implementation. Building on the support for the NAP and the swell of support for RBC, Thailand is in a unique position to promote bold and consistent implementation of RBC principles and standards across the economy.

Policy directions

- Support, enable and promote RBC due diligence among businesses throughout the economy. Explicitly promote broad dissemination and implementation of due diligence in accordance with the OECD *Due Diligence Guidance for RBC*. This includes efforts at the provincial level. The *Guidance* is a practical tool to implement the due diligence expectations as set out in the ILO, OECD and UN instruments.
- Promote due diligence in the activities where the state acts as an economic actor. This includes procurement and activities of state-owned enterprises. Notably, due consideration should be given to how RBC expectations can be reflected in the implementation of the Public Procurement and Supplies Management Act of 2017 and whether amendment is necessary. Additionally, the policy guidance for SOEs should be aligned with the 2015 OECD *Guidelines on Corporate Governance of State-Owned Enterprises* and the specific expectation that SOEs establish and implement due diligence according to international standards should be made clear.
- Provide and communicate clear expectations to businesses on RBC standards for outward Thai investments in the services provided for investors, in collaboration with BOI, Federation of Thai Industries and the Board of Trade, EXIM Thailand and SEC. These services include organising overseas business visits, business seminars and dialogue with business associations of other countries. The information and expectations should also be integrated in BOI's Thailand Overseas Investment Centre under the Thai Overseas Investment Promotion Division. Assess whether further alignment in risk management policies is necessary and whether specific due diligence requirements should be considered.

- Make RBC due diligence a standard operating procedure in special economic zones and the EEC, including promoting transparency around selection of projects and the establishment and operations of zones, as well as meaningful stakeholder engagement with affected communities.
- Encourage and support implementation of RBC in the financial sector. This includes promoting RBC due diligence in the operations of large institutional investors (such as the Social Security Fund), following the lead of the Thailand Government Pension Fund.
- Consider expanding the labour laws, regulations, and initiatives applied in the context of fisheries to other industrial sectors that have a large migrant worker population.
- Ensure that recent protections for human rights defenders are implemented and consider whether further policy action is necessary. The role of non-judicial grievance mechanisms and alternatives means of dispute resolution should be considered.

Scope and importance of responsible business conduct

Promoting and enabling responsible business conduct (RBC) is of central interest to policy-makers wishing to attract and keep quality investment and ensure that business activity contributes to broader value creation and sustainable development (see also Chapter 4). RBC expectations are prevalent throughout global value chains and are affirmed in the main international instruments on RBC – notably the OECD *Guidelines for Multinational Enterprises* (OECD *Guidelines*), the UN *Guiding Principles on Business and Human Rights* (UN *Guiding Principles*), and the ILO Tripartite *Declaration of Principles concerning Multinational Enterprises and Social Policy* – and increasingly in international trade and investment agreements and national development strategies, laws, and regulations. OECD, UN and ILO instruments are aligned and complement each other (see OECD/OHCHR/ILO, 2019).

RBC principles and standards set out an expectation that all businesses – regardless of their legal status, size, ownership structure or sector – avoid and address negative consequences of their operations, while contributing to sustainable development where they operate. RBC means integrating and considering environmental and social issues within core business activities, including throughout the supply chain and business relationships. A key element is risk-based due diligence – a process through which businesses identify, prevent and mitigate their actual and potential negative impacts and account for how those impacts are addressed. Many businesses also find that responsible business is good business, beyond ensuring respect for human rights and compliance with relevant laws and regulations. Understanding, addressing, and avoiding risks material to business operations in a more comprehensive way – that is, beyond financial risks – can often lead to a competitive advantage.

The term corporate social responsibility (CSR) has historically been used to describe business interactions with society. Over the last years, CSR is increasingly being used alongside RBC and business and human rights (BHR). These concepts reflect the expectation that businesses should consider the impact of their operations and supply chains on people, the planet and society as part of their core business considerations and not as an add-on. These concepts should not be understood to be equivalent to philanthropy (see OECD/OHCHR/ILO, 2019).

The important role of the private sector in delivering and financing the Sustainable Development Goals (SDGs) as well as in various means of SDG implementation, for example, public-private partnerships or blended finance, is explicitly recognised by the Agenda 2030 (see UN A/RES/70/1 which calls “upon all businesses to apply their creativity and innovation to solving sustainable development challenges”). A number of SDGs refer to responsible production patterns, inclusive and sustainable economic growth, employment and decent work for all. The Paris Agreement on climate change also underlines the critical role of business in tackling climate change, including through reducing greenhouse gas emissions and improving environmental performance. Implementing RBC principles and standards can help companies operationalise the SDGs and ensure their most significant impacts are prioritised (for more information, see OECD, 2019c).

From risk to resilience: RBC and COVID-19

The COVID-19 crisis has caused a major disruption to global supply chains and exposed significant vulnerabilities in company operations, including related to disaster preparedness and supply chain continuity and resilience (Chapter 2). In addition to the health impact, entire supply chains have come to a halt and placed millions of companies and workers at economic risk (OECD, 2020a). The crisis has also increased vulnerability of already vulnerable populations such as migrant workers (IOM, 2020).

RBC standards and tools can help governments and companies make decisions that balance environmental, social and governance issues in the crisis, while ensuring that such responses do not create further risks to people, planet and society – or contribute to further destabilising supply chains down the line (e.g. resurgence of forced or child labour in certain strategic sectors). COVID-19 recovery plans will place governments in a particularly strategic position to steer the economy toward long-term value creation (including reduced greenhouse gas emissions, worker skills and benefits and emergency preparedness). Governments should consider in their recovery policies that many companies might not commit of their own accord to an RBC approach in their response to COVID-19, either because of a lack of incentive, capacity, resources or knowledge. This may especially be exacerbated in contexts where awareness of RBC is low. Government support for RBC approach will be essential for ensuring coherence between their own policies in response to the crisis and their expectations of how businesses should act, including as part of industrial policies. Government should ensure that measures do not exacerbate negative impacts of the crisis, but rather incentivise companies to mitigate any potential harms and maximise the positive impacts of their response.

For businesses, RBC should not be seen as an additional burden in lieu of focusing on business continuity, but rather a strategic orientation that can encourage a more systemic and dynamic crisis response, discourage a ‘go-at-it-alone’ position (Barry, 2020), and bring short and long-term benefits to the company as it designs its crisis response. For example, working out contingency plans with workers and suppliers may make more commercial sense than paying the price of disbanding large segments of a workforce that took years to build and train. Furthermore, information from supply chain due diligence (e.g. on origin of raw materials, and other traceability data) when overlaid with risks related to COVID-19 (such as infection rates, government restrictions and associated disruptions in production or distribution channels) can be used to understand short and medium term vulnerabilities in the supply chain, and support continuity planning to manage disruptions. Notably, it can also contribute to disaster preparedness and resilience overall, which is especially useful considering the risks of disruptions by climate change.

Thailand is a regional leader on RBC

Thailand has expressed in numerous public statements and at the highest political levels that it intends to be a regional champion of RBC. Several policy initiatives have been implemented over the course of the last few years, culminating on 29 October 2019 in Thailand becoming the first country in Asia to adopt a standalone *National Action Plan on Business and Human Rights (2019-2022)* (NAP). The process, led by the Rights and Liberties Protection Department of Ministry of Justice, started in 2016 and has been recognised as inclusive and participatory. With this action, Thailand joins the 22 countries which have developed a standalone NAP on RBC or business and human rights, following a recommendation by the UN to do so as part of the state responsibility to disseminate and implement the UN *Guiding Principles*. NAPs are a useful tool for promoting policy coherence within the government, engaging with stakeholders, and demonstrating commitment to RBC. Notably, the Thai NAP references the main international instruments on RBC.

The Thai NAP outlines four key priority areas, namely actions to address 1) labour; 2) community, land, natural resources and environment; 3) human rights defenders; and 4) cross-border investment and multinational enterprises. It also envisions an implementation plan and indicators for monitoring and evaluation. This is a significant achievement to promote RBC in Thailand and among Thai enterprises operating domestically and abroad. The Thai NAP summarises all of the legislative action in this regard.

Thailand has also promoted RBC in other ways. For example, an early promoter of CSR was the Ministry of Industry Department of Industrial Works through CSR awards. The Stock Exchange of Thailand (SET) has initiated sustainability awards since 2006. Thai Institute of Directors Association also promotes sustainability as part of its work programmes and promotion of good corporate governance and offers a Board of the Year Award with sustainability and stakeholder views included in the criteria. The Ministry of Justice Rights and Liberties Protection Department has also initiated the Business and Human Rights Awards.

Additionally, the National Human Rights Commission of Thailand (NHRCT) has played a critical role by raising visibility about the complaints received in the business and human rights field and by organising awareness raising events and workshops. The government has also taken steps to promote RBC among Thai state-owned enterprises (SOEs), including by directing them to follow RBC standards and practices (see section below).

There have also been sector or thematic policy commitments. For example, Thailand was the first country in Asia to ratify the ILO Work in Fishing Convention, 2007 (No.188), which is intended to protect the living and working conditions on board vessels (ILO, 2019). Thailand's significant efforts to prevent human trafficking have resulted in an increase in its rank in 2018 to Tier 2 from Tier 2 Watchlist in the US State Department Trafficking in Persons Report (see US State Department, 2019).

Another example are the efforts by the Securities and Exchange Commission (SEC) which was an early champion of sustainability, notably connecting the topics of corporate governance, ESG, sustainability, and anti-corruption, in the Sustainability Development Roadmap which was adopted as part of the SEC Strategic Plan 2013-2015. The SEC Strategic Plan 2020-2022 addresses the importance of sustainability as one of its 5 priorities. Recent efforts (see section below) focus on raising awareness in the market on the SDGs, diversity, and human rights. In 2019, the SEC and the NHRCT signed an MOU to support listed companies with implementation of the UN *Guiding Principles* (SEC, 2019a). Several events were organised to support these objectives, as well as promotional activities such as letters circulated to companies and financial advisors (see section below).

Thailand is also the first country in Southeast Asia to sign a country programme with the OECD, where promoting/enabling RBC on the basis of the OECD RBC standards is included as a priority area of cooperation. The country programme aligns with Thailand's 20-Year National Strategy (2018-2037) and the 12th National Economic and Social Development Plan (NESDP 2017-2022). RBC activities are supported by the EU-ILO-OECD *Responsible Supply Chains in Asia* Programme.[1]

Notwithstanding the initiatives by the government, RBC-related activities in Thailand have also been undertaken by the private sector and civil society, such as when 15 businesses spearheaded the creation of the Thailand chapter of the UN Global Compact Network in 2016, which as of November 2019 counted 46 members (UN Global Compact, 2019). Businesses and business associations, including the Joint Steering Committee on Commerce, Industry, and Banking (JSCCIB), Federation of Thai Industry, Thai Bankers' Association and Stock Exchange of Thailand organised awareness raising events and workshops to familiarise businesses with international standards on RBC and to engage in the process of developing the Thai NAP. For example, JSCIIB, Royal Thai Government and the OECD organised a dedicated conference for business in 2018 on *Strengthening responsible business conduct through international standards* in the framework of the 2nd Bangkok Business and Human Rights Week. The conference focused specifically on RBC due diligence and featured high-level business representatives and government officials.

Nevertheless, a number of stakeholders consulted as part of this Review felt that more business involvement is needed and that, while awareness is increasing, implementation could be further improved even when policy commitments at the company level exist. Furthermore, efforts are not consistent across sectors and there is still a need for significant awareness raising in certain sectors. The Thai NAP will be an opportunity to promote more consistent implementation of RBC principles and standards across the economy.

The Government should consider promoting the implementation of the 2018 *OECD Due Diligence Guidance for Responsible Business Conduct* in this regard. The *Guidance* promotes a common understanding of RBC due diligence across sectors and has been recognised also by the ILO and the UN Working Group on Business and Human Rights. The UN Working Group on Business & Human Rights underscored the status of the Guidance as an important authority on due diligence and on alignment with the UN *Guiding Principles*. In its report to the UN General Assembly in 2018, the Working Group underlined that "[t]he recently issued OECD *Due Diligence Guidance* […] provides a comprehensive practical tool for supporting implementation of human rights due diligence in line with the *Guiding Principles*, which is based on comprehensive multi-stakeholder inputs and dialogue." (UN, 2018). One particular element that could be useful is cross-sector and cross-thematic learning. Business associations can play a significant role in this regard by disseminating the guidance and tools and ensuring training opportunities for their members.

Translating policy commitments into implementation

The efforts by the Thai government to set RBC policy direction through the NAP, including specific actions and indicators of success are commendable, but the real test will be in implementation. The below sections focus on key areas where implementation of international RBC principles and standards could make a marked difference in the market. The choice of these areas is not meant to be exclusive and is complementary to the Thai NAP.

Leading by example – RBC and the practice of state-owned enterprises

The National Human Rights Commission of Thailand has played a key role in raising awareness of the importance of RBC in the context of SOEs. The NHRCT has reported that a number of complaints have been received over the course of the last few years related to SOEs and state projects, particularly on labour rights and large-scale impacts on environment and communities. The NHRCT has also played a key role when it comes to overseas investments and activities of other enterprises.

It is estimated that the revenue of Thailand's 56 SOEs amounts to 40% of Thailand's GDP and that they employ 425 000 workers. Five are listed on the Stock Exchange of Thailand. The important role of SOEs is also recognised in the Thai NAP. The government has directed Thai SOEs to follow RBC principles and standards. This move has been welcomed by the UN Working Group on Business and Human Rights (UN OHCHR, 2018a). The State Enterprise Policy Office has also reported that it implements the 2005 *OECD Guidelines on Corporate Governance of State-Owned Enterprises*.

The direction that the government has set on RBC for SOEs is an important move in the market, considering the importance of Thai SOEs. This commitment now needs to be followed by swift action on RBC. Not only would this set an example for other enterprises, it would also increase disclosure and transparency, and could help address some concerns in priority sectors such as infrastructure.

The government should align its policy guidance for SOEs with the updated 2015 OECD *Guidelines on Corporate Governance of State-Owned Enterprises*, which recommend that the state ownership policy fully recognises SOE responsibilities towards stakeholders and request that SOEs report on their relations with stakeholders, as well as to make clear any expectations the state has in respect of RBC by SOEs (OECD, 2015). The SOE *Guidelines* further recommend, and rely in this regard on the Board of Directors to the executive management, extensive measures to report on foreseeable risks, including in the areas human rights, labour, the environment, as well as risks related to corruption and taxation.

These expectations are in line with the OECD *Guidelines for Multinational Enterprises* (which apply to all entities within the enterprise in all sectors, whether of private, state or mixed ownership) as well as the UN *Guiding Principles*, which apply to all states and all enterprises. UN Guiding Principle 4 stipulates that states "should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence" (UN, 2011). A 2016 report by the UN Working Group on Business and Human Rights examined the practices with respect to current RBC and business and human rights practices of SOEs and found that there is a general lack of attention to RBC issues and that policies, guidelines and good practices are lacking at both the international and national levels (UN, 2016). The government could direct SOEs to implement the OECD due diligence guidance in the first instance.

For example, the improving the corporate governance practices of SOEs can help remove barriers for private investments, which is particularly important in priority sectors such as infrastructure. Integrating practices like due diligence for environmental and social risks, improving processes related to stakeholder engagement, and promoting disclosure and transparency, could go a long way in mitigating risks.

Supporting and encouraging action in the financial sector

One especially promising aspect for the promotion of RBC in Thailand has been the attention given to RBC in the context of the financial sector. Financial institutions have a key role to play in driving global sustainability through directing financing towards measures to achieve the SDGs and the transition to a low carbon economy (see also Chapter 10).[2] In Thailand, the SEC, the SET, Thai institutional investors, and Thai Bankers Association all have initiatives on RBC. SEC was an early champion of sustainability, notably connecting the topics of corporate governance, environmental, social and governance (ESG) factors, sustainability, and anti-corruption, in the Sustainability Development Roadmap which was adopted as part of the SEC Strategic Plan 2013-2015. The new SEC Strategic Plan 2020-2022 includes sustainability as one of its priorities, to promote alignment with and achievement of the SDGs, and includes a direct reference to promoting business and human rights. The SEC plans to offer capacity building programmes and tools to help companies implement due diligence. Furthermore, a pilot project at the regional level is planned in order to promote due diligence with companies not only in the Bangkok area.

Additionally, the SEC and nine other partners jointly established the Thailand Responsible Business Network in December 2019 which will provide a platform for further development of the capital market towards SDGs by inviting listed companies to initiate or join existing projects. Furthermore, the SEC 2017 Corporate Governance Code integrates the essence of principles and best practices of the G20/OECD *Principles of Corporate Governance* and the SET *Principles of Good Corporate Governance*. It recognises the importance of responsible business and business leadership explicitly and delineates the board roles and responsibilities for the company's long-term sustainable value creation (SEC, 2017a). Furthermore, the SEC Investment Governance Code 2017 developed for institutional investors explicitly promotes responsible and sustainable investment and investing in companies with good ESG practices (SEC, 2017b; for more information on the history of SEC's efforts see SEC, 2019b). SEC is planning capacity-building activities under the Thai NAP for listed companies.

The SET maintains a Social Responsibility Centre (originally set up in 2007 as Corporate Social Responsibility Institute) which has a mandate to build a strong foundation for the sustainable growth of the capital market in the long run. The SET publishes a list of Thai companies since 2015 that have a strong performance on ESG and also awards an annual sustainability award. It also provides training and workshops on sustainability reporting, as well as encourages large companies to become participants in the Dow Jones Sustainability Index (see SET, 2019).

The momentum for responsible financial strategies and products is also growing in Thailand, mirroring global trends. Globally, current strategies for responsible investment vary widely in terms of objectives, scope of application, and prevalence of use amongst institutional investors.[3] Box 8.1 provides an overview of approaches with respect to responsible investment.

The Government Pension Fund (GPF) been at the forefront of aligning its practices with international RBC practices (see Economist, 2019). The OECD and GPF are working together to align GPF's strategies and policies with 2017 OECD *Responsible Business Conduct for Institutional Investors*, which sets out key considerations for institutional investors in carrying out due diligence to identify and respond to environmental and social risks within their portfolios. This publication was developed with the support of leading asset owners and investment managers and has been formally endorsed by 49 governments (OECD, 2017b). GPF has also organised a number of conferences and technical workshops and, in August 2019, GPF and 32 securities companies signed a collaborative agreement to engage and develop negative list guidelines as part of efforts on ESG (ThaiPBS World, 2019). The OECD, World Bank, and GPF will continue working together in 2020 in this regard.

In order to level the playing field and encourage industry laggards to perform better, the Thai government can define minimum expectations and actively promote responsible investment with other practitioners, building on and promoting existing standards, as well as existing experience to foster a common understanding of responsible investment in the economy. This will be especially relevant in COVID-19 recovery. Risk aversion in the financial markets due to COVID-19 has reached levels not seen since the global financial crisis. Stock markets have declined over 30% and volatility has spiked to crisis levels (OECD, 2020b). Good news, however, is that early reports already suggest that interest in RBC has significantly increased and that RBC is being seen in the market as a marker for long-term performance of companies. ESG funds have already outperformed traditional funds during the crisis, in line with existing evidence on the business case for RBC.[4]

Box 9.1. Responsible investment strategies

A variety of approaches exist with respect to responsible investment. While there is no formal definition of these different approaches the below terminology has been associated with the described strategies.

Responsible Investing - often used as a catch all term that may encompass various strategies which take into account environmental and social issues in the context of investment decision making.

Environmental, Social, Governance (ESG) Integration - defined by the *Principles for Responsible Investment* as "the explicit and systematic inclusion of ESG issues in investment analysis and investment decisions." ESG criteria may be used primarily to identify financial risks posed by real or potential ESG impacts.

Impact investment - products or strategies that seek to generate positive social or environmental impacts alongside a financial return.

Ethical investment – products or strategies that are dictated by certain ethical or moral considerations. For example, exclusionary or screening processes which exclude investment in certain industries (e.g. tobacco).

For more information, see OECD, 2019a.

Furthermore, efforts in the banking sector have also been undertaken recently. The Bank of Thailand in collaboration with the Thai Bankers Association has established the *Sustainable Banking Guidelines on Responsible Lending* in August 2019. This can help promote RBC among Thai banks and foreign banks operating in Thailand; although it would be advisable to also consider swift implementation. A recent report by the World Wildlife Fund on sustainable banking in ASEAN showed that, while Thai banks in general have developed sustainability strategies and have engaged with stakeholder, implementation could still be improved. According to the report, most ASEAN banks have not adequately mitigated risks from their clients and may not be aware of the extent of their risk-exposure. It could be useful to consider whether alignment with the OECD *Due Diligence for Responsible Corporate Lending and Securities Underwriting* can be useful in this regard, particularly when it comes to implementation of the Thai responsible banking and lending guidelines. The OECD paper, which was published in October 2019, provides a common global framework for financial institutions to identify, respond to and publicly communicate on environmental and social risks associated with their clients. The report helps banks and other financial institutions implement the due diligence recommendations of the OECD *Guidelines for Multinational Enterprises* in the context of their corporate lending and underwriting activities.

Removing barriers to implementation

These efforts should be encouraged and supported as a priority, as well as reinforced among other key financial institutions in Thailand, including other large institutional investors such as the Social Security Fund. A growing body of empirical evidence suggests that investments which take ESG factors into account can add value and lead to higher risk-adjusted returns net of expenses. RBC factors appear to have, at best a positive relationship with corporate financial performance and at worst a neutral relationship (OECD, 2017).

Nevertheless, investors and other stakeholders have identified various challenges to integrating ESG factors in the activities of financial sector practitioners. Among these challenges are poor understanding of ESG risks and lack of standardised approaches to ESG risk management (see for example State Street Global Advisors, 2018); governance frameworks which are not explicitly compatible with ESG strategies; and lack of quality data and comparative metrics on ESG issues (see Morgan Stanley, 2018).

Thai financial institutions and policy makers have been proactive in responding to some of these challenges and may draw further inspiration from experience of other governments and practitioners. When it comes to interpretation and design of existing governance frameworks, some investors continue to perceive legal barriers between the responsibility to protect the financial interests of beneficiaries and consideration of ESG factors, even when these do not exist in practice. OECD research has found that this is partially because investment governance regulatory frameworks and risk-based controls generally do not explicitly refer to ESG factors. This gap has meant that investors and other financial institutions have had to interpret for themselves the extent to which responsible investment strategies are possible or permitted (OECD, 2017a).

In this respect, Thailand has taken important steps to explicitly recognise the importance of taking into account long-term value drivers like environmental and social risks in investment governance through corporate governance or investor stewardship codes. SEC efforts are notable in this regard. Further promoting alignment and being explicit on what RBC due diligence means in practice in line with international principles and standards can further introduce clarity in the market and position Thai market as a leader in the region.

Another challenge is the tension between ESG objectives (which are viewed as important to long-term value creation) and the investment horizons (which seek to maximise shareholder value in the short-term). In a survey by State Street, 47% of asset owners and 43% of asset managers indicated that they believe that the proper timeframe for expecting responsible investment strategies to outperform is five years or more, but only 10%-20% use these time frames for actually evaluating performance. Investment performance is still generally measured and reported on a 1, 3 and 5-year horizons (Cappucci, 2017).

Nevertheless, it is possible for regulators to promote long-termism even when taking this context into account. The market, by its nature, is unlikely to deliver such a change. Moving from the current mind-set to a longer-term investment environment requires a new "investment culture". Further analysis and recommendations on how regulators can promote long-termism by institutional investors are available in OECD brief on *Promoting Longer-Term Investment by Institutional Investors: Selected Issues and Policies* (OECD, 2011). Thai regulators may wish to assess and analyse to what degree the current framework allows for long-termism.

Finally, lack of quality data when it comes to responsible investment strategies and measuring the financial performance of such strategies has also been raised by Thai practitioners as a central challenge, mirroring experience globally. For example, 68% of asset owners surveyed in a Morgan Stanley study noted that a lack of availability of quality ESG data is the leading challenge to responsible investment (Morgan Stanley, 2018).

Many investors currently rely on ESG data providers and raters; however, a lack of agreed sustainability disclosure metrics at an international level has resulted in a high level of subjectivity in ESG scoring that hinders the ability to assess performance and risk. These issues are compounded by issues with quality, comparability and availability of ESG data, and the lack of standardised disclosures on ESG data by ESG data providers and issuers.

Resolving challenges with ESG data will be an ongoing process that requires collaboration across policymakers, investment practitioners, ESG data providers and corporates. However, policy makers in Thailand can take certain steps to facilitate improved ESG data disclosure. The role of SET's Social Responsibility Centre is relevant in this regard. Thai policy makers can further encourage quality data and reporting through mandating reporting against widely used and recognised frameworks, such as those developed by the Task Force on Climate Related Disclosures, Global Reporting Initiative (GRI), Sustainability Accounting Standards Board and OECD due diligence reporting recommendations. Establishing classification and benchmarking systems for sustainability factors, e.g. GHG emissions and climate performance, should also be considered. For example, such efforts are underway in the EU as part of the EU Sustainable Finance Action Plan which includes establishing an EU classification system for sustainable activities (Action 1); creating standards and labels for green financial products (Action 2); developing and harmonising sustainability benchmarks related to carbon (Action 5); and strengthening sustainability disclosure and accounting rule-making (Action 9). The EU has recently introduced a taxonomy to reflect commonly agreed principles and metrics for assessing whether economic activities can be considered environmentally sustainable for investment purposes.

An additional emerging issue with existing ESG reporting and rating frameworks is ambiguity around the materiality of the data provided. Currently, lack of clarity exists on two aspects: how ESG products reflect environmental and social performance and impacts and how financial materiality related to ESG factors is assessed. Ensuring that ratings agencies and reporting frameworks be explicit about whether they are focused on (only) ESG issues which create a financial risk for the company or actual ESG performance (and whether they report information related to these issues separately) will be critical for brining clarity to the market. Relevant actors in Thailand should assess whether this clarification is needed in Thailand.

Thai regulators have already been attempting to address these issues in several ways. For example, since 2013, the SEC requires issuing companies and listed companies to comply with disclosure requirements under Notification of the Capital Market Supervisory Board 44/2556 *Re: Rules, Conditions and Procedures for Disclosure regarding Financial and Non-financial Information of Securities Issuers* under chapter 3 clause 29. The SEC has recommended that companies should follow the SET's 2012 *Guidelines for Sustainability Reporting* or international standards. For example, companies can consider Global Reporting Initiative (GRI) format in the One Report from 2022 onwards. The SEC has reported to the OECD as part of this Review that it is also planning to issue several manuals in 2020, for example on One Report, as well as to introduce listed companies to the SDGs and to promote impact measurement and management and links with RBC. The SEC is also considering how to promote climate-related issues through the disclosure of carbon emissions information as part of the One Report on a comply or explain basis. Further development on climate-related disclosure are being considered as well for the next phase.

Thailand as a regional leader on RBC in the financial sector

Thailand's ambitions to be a regional leader could be particularly impactful in the context of this sector. Overall, in Asia, the importance of the financial sector is significant and increasing. According to the 2019 OECD Equity Market Review of Asia, the average annual amount of equity capital raised by Asian companies increased from USD 46 billion (2000-08) to USD 67 billion (2009-18). The opposite trend holds in the US and Europe, with the respective numbers at USD 78 billion (2000-08) to USD 51 billion (2009-18). Additionally, and contrary to the trends in the US and Europe, there is an increasing number of new listings by Asian companies. While these developments are largely due to companies from large Asia markets like China, India, Korea, and Japan, a closer look at the regional IPO activity also reveals that several emerging markets, such as Viet Nam, Thailand, Indonesia and Malaysia, rank higher in terms of IPOs than most advanced economies.

Another finding from the OECD review is that stock markets are increasingly integrated. A growing share of public equity investments are being made across borders, plus companies are also taking advantage of foreign equity markets to raise capital. At the end of 2018, 510 Asian companies were listed on a market other than the domestic market, without having a domestic listing, and 120 Asian companies were cross-listed on the domestic and foreign markets.

This interdependence can mean that dealing with different legal and regulatory frameworks (including also when it comes to RBC) can be a challenging prospect. Having an example from the region which considers RBC in the sector in a holistic way and aligned with international principles and standards can serve as a concrete example of how broader policy efforts on RBC can be implemented at the sector level. Additionally, alignment with international practice can also be useful for integrating the sector further in the global markets. For example, the recommendations outlined in the OECD paper on Responsible Business Conduct for Institutional Investors have been endorsed by leading investment managers[5], pension funds,[6] and recently referenced in an *EU Regulation for Sustainable Disclosure,* which calls on the EU institutional investors and other financial market participants to report on their due diligence processes. The new regulation sets out how financial market participants and financial advisors must integrate ESG risks and opportunities in their processes, including reporting on adherence to internationally recognised standards for due diligence. The recital to the regulation calls on financial market participants and advisors to report on due diligence processes "to take into account the due diligence guidance for responsible business conduct developed by the [OECD]."[7]

As Thailand embarks on Thailand 4.0, increasing awareness, capacity and uptake of due diligence approaches in the financial sector; promoting cohesive, streamlined and internationally-aligned approaches to sustainable finance amongst practitioners and policy makers; and addressing existing challenges and facilitating RBC for the financial sector, will both support future development and help ensure that it does not come at a social or environmental detriment.

Protecting human rights defenders

One issue that warrants a specific mention, as also recognised in the Thai NAP, is the protection of human rights defenders. There have been a number of high-profile Strategic Litigation Against Public Participation (SLAPP) lawsuits in Thailand. The ability of stakeholders to raise issues and engage in the due diligence process without fear of retribution is a key component of due diligence. SLAPP lawsuits not only have a chilling effect on dialogue, but also affect the quality of the business environment and the perception of the country risk for investors.

They also limit the opportunities to address persistent RBC challenges that defy a solution by one single actor. Practical experience shows that a multi-stakeholder approach is one of the best ways to address complex and systemic challenges that may lead to human rights, labour, environmental and other negative impacts of business operations. Getting the buy-in from a variety of actors enables a constructive and problem-solving mind-set and helps move away from finger-pointing toward building a consensus on how best to implement and promote RBC principles and standards. If workers, trade unions, civil society or whistle blowers cannot meaningfully engage, that has a chilling effect on such processes and solutions. The importance of meaningful stakeholder engagement is recognised by international RBC principles and standards.

Attacks on human rights defenders when they seek to expose human rights abuses related to business activity is growing globally (UN, 2017). It is important in this context that governments protect the public interest. The UN Special Rapporteur on the rights to freedom peaceful assembly and of association recommended that states consider enacting anti-SLAPP legislation (allowing an early dismissal with an award of costs of such suits and the use of measures to penalise abuse); that all state actors – legislative, judiciary, executive, regulatory – at any level should work towards facilitating an environment where criticism is part of a healthy debate on any issues of public or societal relevance; and from private companies to refrain from the use of civil lawsuits as a means of shutting down public participation and critical advocacy (UN OHCHR, 2017).

UN experts have recommended that Thailand decriminalise defamation and revise its civil and criminal laws as well as prosecution processes to prevent misuse of defamation legislation by companies (UN OHCHR, 2018b). In this regard, the Rights and Liberties Protection Department of the Thai Ministry of Justice has highlighted the efforts by the Office of Court of Justice in 2019 on a new section 161/1 of the Criminal Procedure Code which is meant to provide the courts with the power to dismiss any criminal cases that appear to be driven by SLAPP. The Department also highlighted the ongoing efforts to include human rights defenders and media in the draft of the 4th National Human Rights Plan as a new target group for special protection and the establishment of a committee for developing and advancing measures in protecting human rights defenders at risk at the Ministry of Justice. Additionally, the Department highlighted the ongoing amendment of the Witness Protection Act. The Department is also working on awareness raising, including for example by publishing a handbook for human rights defenders to distribute to human rights defenders across the country.

Government can also promote change by convening dialogues and peer learnings, which could feature examples of how contentious issues have been solved in other contexts. Finally, Thailand could consider strengthening non-judicial grievance mechanisms and providing alternative forms of conflict resolution that could be considered in a staggered context. The Mediation Act adopted in 2019 can be useful in this regard.

Extending protections across sectors based on experience from the seafood sector

Following the international attention focused on labour issues and migrant workers in the fishing and seafood industry in Thailand, the government introduced major reforms in the legal framework for labour and migrant workers. The EU recognised the substantial progress made by Thailand in this area and, on 14 October 2019, the EU Foreign Affairs Council reiterated the EU's readiness to broaden its engagement with Thailand and stressed the importance of taking steps towards the resumption of negotiations on a Free Trade Agreement with Thailand (EU, 2019). Nevertheless, the picture is not so clear-cut when it comes to other trading partners. That same month, on 25 October 2019, the Office of the United States Trade Representative announced the suspension of USD 1.3 billion in trade preferences for Thailand under the Generalized System of Preferences (GSP) "based on its failure to adequately provide internationally-recognized worker rights", highlighting longstanding worker rights issues in the seafood and shipping industries (USTR, 2019).

These different actions can likely be attributed to the fact that despite significant efforts by all stakeholders in Thailand in the sector, challenges persist and can also be exacerbated by the practices throughout the supply chain. For example, a December 2019 report by Humanity United and The Freedom Fund cautioned that, while recognising the remarkable achievements in the sector over the last few years, pricing and purchasing practices in the sector still present a significant barrier for meaningful change (Praxis Labs, 2019). Similar findings are echoed in the ILO *Endline research findings on fishers and seafood workers in Thailand,* published in March 2020 in the context of the ILO Ship-to-Shore project. ILO found that, while there have been significant gains since 2017 and there is no doubt that practices in the sector have seen improvements (particularly when it comes to efforts by the government to strengthen the legal framework and elaborate a more comprehensive legal framework to manage labour migration), abuses in the fishing and seafood sectors persist, including circumstances of involuntary work and coercion, which are elements leading to forced labour.

No straightforward or easy solutions exist in this regard, as evidenced by the ILO recommendations in the report. Considering how alignment of existing initiatives with global market standards such as the UN *Guiding Principles* and the OECD *Guidelines*, could be useful. They provide a common framework for discussion and delineation of responsibilities. For example, the various OECD RBC due diligence guidances recognise and recommend that businesses align their internal incentives and purchasing practices to avoid facilitating or incentivising their suppliers to cause adverse impacts on people, planet and society. The ILO recommends mandating monthly meetings between officials, unions, civil society to accelerate and focus enforcement actions. Buyers could be brought into these dialogues as well. Multi-stakeholder solution on issues like compliance costs and pricing will be needed to move the dial forward.

Learnings from other sectors could also be useful. Some characteristics of the seafood supply chain can be similar to other supply chains. Promoting better business practices broadly and encouraging cross-sectoral learning, as mentioned in the previous section, can be beneficial. For example, the garment and footwear sector has struggled with addressing persistent issues with wages and labour issues. The OECD *Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector* recognises that purchasing practices of retailers, brands and their buying intermediaries have been demonstrated to contribute to harmful impacts – such as excessive and forced overtime and low wages – in some cases. While the primary responsibility for compliance with the law does not shift, the guidance highlights that considerations around purchasing practices and price setting should be included in the assessment of the enterprise’s own operations as an important element of due diligence. The guidance sets out recommendations for 1) assessing whether purchasing practices are contributing to harm, 2) control measures to prevent contribution to harm, and 3) creating red-flag systems, and developing procedures for purchasing teams to follow in instances in which practices could contribute to harm is a part of due diligence process.

The guidance also addresses pricing, noting that “The enterprise should develop pricing models that account for the cost of wages, benefits and investments in decent work. The above considerations should be reflected in freight on board (FOB) prices together with traditional pricing considerations such as quantities being purchased, cost of materials, skill requirements, etc.” It recognises that an enterprise’s price negotiations may contribute to cost-cutting and therefore labour, human rights or environmental impacts and recommends the enterprise to strengthen its management systems to prevent contributing to harm through its purchasing practices (see OECD, 2018).

It is also important to highlight that labour issues also concern other sectors of the economy. Labour measures used in the fisheries sector could be applied to other industrial sectors, such as agriculture and construction, which have a large number of migrant workers. Businesses should conduct RBC due diligence and report on their efforts publicly in order to promote transparency. Expanding the laws, regulations, and initiatives applied in the context of fisheries to other industrial sectors that have a large migrant worker population would be warranted.

The government should also consider the role of public procurement as a strategic tool for promoting responsible business practices. The buying power of governments is a lever for promoting RBC. Governments are expected to lead by example by incorporating RBC standards in their purchasing policies, to safeguard the public interest and ensure the accountability of public spending. While there are increasing international commitments to link public procurement and RBC, there is a lack of practical implementation.[8] In particular, Thailand should consider how RBC expectations could be reflected in the implementation of the *Public Procurement and Supplies Management Act of 2017* and whether amendment is necessary.

Addressing increasing pressures on the environment and natural resources

An important policy objective by the government is to enhance investment in green technologies and renewable energy (see Chapter 10). Impacts of climate change need to be considered as a matter of priority. Thailand is likely to be severely affected by climate change, due to its extensive coastline, rural communities dependent on agriculture, and heavily populated urban areas located on flood prone areas. The agriculture sectors (including forestry, livestock, and fisheries) employ 30% of Thailand's workforce in 2018 and contributed to 8% of GDP (UNDP/FAO, 2019). As mentioned earlier in this report, food is by far the largest manufacturing sector in Thailand, both in terms of value added (19%) and employment (22%), followed by motor vehicles with 12% of total value added and, in terms of employment, fabricated metals with just 7%. Trends in revealed comparative advantages identify food processing as the most dynamic sector in Thailand (see Chapter 3).

Enterprises involved in agricultural supply chains can create employment, raise labour standards and bring the technology to increase agricultural production or reduce pollution. But their activities can also contribute to food insecurity by leading to the eviction of local communities from their lands. Child labour and abuses of migrant workers and women are reported. The production of some agricultural commodities leads to soil degradation, water resource depletion and deforestation. OECD estimates that by 2050 over 40% of the world's population are likely to be living in river basins under severe water stress. Overall water demand is projected to increase by 55%. Surface water quality outside the OECD is expected to deteriorate in the coming decades, through nutrient flows from agriculture and poor wastewater treatment. The consequences will be increased eutrophication, biodiversity loss and disease. Micro-pollutants (medicines, cosmetics, cleaning agents, and biocide residues) are an emerging concern in many countries (OECD, 2012). At the same time, while negative impacts are serious, agriculture can also positively affect the environment, for instance by trapping greenhouse gases within crops and soils, or mitigating flood risks through the adoption of certain farming practices (OECD, 2019d).

Businesses have a responsibility to prevent and address negative impacts of their actions on the environment. Experience from the pilot project with companies in Southeast Asia to implement the OECD-FAO *Guidance for Responsible Agricultural Supply Chains* shows that many companies do have existing issue-specific policies and practices, including technical environmental standards; however, cross-cutting issues that enable responsible business across all areas of company operations are less common. This insight comes from a diverse group of Southeast Asian agribusiness companies operating across the supply chain, with 82% of companies involved in cross-border trade, and it is particularly relevant to consider in the context of addressing cumulative impact of company operations and climate change. It is widely accepted that the business responsibility to respect human rights and environmental rights includes the responsibility to identify, prevent, mitigate, and account for impacts related to climate change, in line with the UN Guiding Principles and the OECD *Guidelines*. It is important to have both an issue-specific perspective but also cross-cutting topics rooted in risk-based due diligence and overall company policies (see OECD, 2020c). This means ambitious mitigation action to reduce emissions and to strengthen their climate resilience in order to address and adapt to the physical and transition risks of climate change on their direct operations and supply chains – including impacts on workers, local communities and the natural environment. Companies which are able to increase mitigation and adaptation responses to climate change risks and impacts are better able to meet investor and consumer expectations, maintain a social licence to operate, mitigate reputational damage, increase competitiveness and protect their bottom line. Similarly, the Thai government should assess whether its own business activities, including activities conducted in partnership with the private sector, contribute to mitigating climate change while respecting human rights, and ensuring effective remedies for climate and human rights harms.

Ensuring future growth does not exacerbate existing challenges

Environmental and social risks and impacts are not only connected to low value-added industries. This is of particular relevance to Thailand in the context of efforts to promote Thailand 4.0 and higher value-added industries. Thailand 4.0 focuses on five existing industrial sectors with the aim to add value through advanced technologies: agriculture and biotechnology; smart electronics; affluent medical and wellness tourism; next-generation automotive; and food for the future. The second group includes five additional growth engines: biofuels and biochemical; digital economy; medical and healthcare; automation and robotics; and aviation and logistics.

As discussed in Chapter 5, several modalities for growing these industries have been identified by the government, notably the promotion of investment in special economic zones (SEZs) and the development of the Eastern Economic Corridor (EEC). The EEC strategy aims to promote mainly investments in targeted core technologies, high-impact and strategic investments. These include important infrastructure projects such as the dual-track railway, high-speed train, extensions of ports and upgrading of the U-Tapao international airport.

The government should ensure that international RBC principles and standards are promoted in the context of SEZs and the EEC, including promoting transparency around selection of projects and the establishment and operations of zones, as well as meaningful stakeholder engagement with affected communities. RBC due diligence should be promoted as a standard operating procedure as a way to identify and address more significant impacts on the communities and the environment. The NHRCT found that among complaints received about business-related adverse impacts from 2001 to 2018, the three most frequent complaints were environmental pollution on human health, forced evictions of communities with no or inadequate compensation, and lack of or inadequate public consultations with communities affected by large-scale development projects (ASEAN Post, 2019).

Furthermore, when it comes to development of next generation industries, it is important to integrate a consideration of environmental and social impacts right from the start. For example, international organisations and academics have expressed concerns about the understudied environmental and occupational health and safety impacts associated with high-tech and the electronics industry. Concerns permeate the entire supply chain and include everything from worker exposure to hazardous and toxic chemicals during the production process to the associated risks with an ever-increasing volume of industrial and hazardous waste (such as electrical and electronic waste). For example, a recent epidemiologic review published in the International Journal of Occupational and Environmental Health looked at health impacts of semiconductor production. Most evidence suggests reproductive risks (e.g. congenital malformation and reduced fertility) from fabrication jobs, while noting that, although chemicals are suspected as causal agents, knowledge about the likely contributions from specific exposures is still limited. The study also looked at available studies of cancer risks and did not necessarily find a causal relationship, but nevertheless cautioned that available studies had serious limitations, such as information bias, that could be associated with underestimation of the risks (Kim et al, 2014). The implementation of international RBC standards across sectors and not in silos will be important.

Promoting and enabling RBC in outward investment

As discussed in Chapter 11, Thailand's presence in ASEAN as an outward investor has been steadily rising in recent years, accounting for a third of outward FDI and increasingly concentrated in Cambodia, Lao PDR, Myanmar and Viet Nam (CLMV). Myanmar and Viet Nam received 70% of CLMV investment. Investment projects are mostly concentrated in mining and energy, the food industry, and in construction and real estate development projects. Additionally, as CLMV countries grow, their need for infrastructure investments increases – a market opportunity that Thai firms have actively ventured in to.

Actively promoting and enabling RBC in outward investment is essential both for reinforcing Thailand's regional leadership aspirations, and also for ensuring that Thai businesses do not contribute to negative environmental and social impacts across ASEAN. As ASEAN integrates further, negative impacts in Thailand's neighbouring countries, including for example negative spill-over effects from climate change and environmental degradation, will also have an impact on Thailand itself. Businesses have an independent responsibility to address their negative impacts, irrespective of how developed regulatory frameworks in host economies are.

Challenges with Thai investments abroad have been identified and documented in a number of sectors, although it should be noted that this is not the case solely for Thai companies. RBC issues are a challenge for many sectors and jurisdictions. Nevertheless, for example, a few high-profile cases have been examined by the NHRCT concerning Thai investments in Cambodia and Myanmar and the significant impacts on the local population. These impacts can also spill over and affect the perceptions of investors that are considering Thailand as an investment destination on its own. In September 2019, the UK National Contact Point for Responsible Business Conduct, a government agency in charge of implementing the OECD *Guidelines for Multinational Enterprises*, decided that a complaint submitted against a multi-stakeholder membership organisation working as a global sugarcane platform merited further examination. The allegation is that the organisation failed to conduct adequate due diligence and apply leverage to its Thai member as related to alleged human rights violations in Cambodia. The complainants also allege that the organisation does not have in place adequate human rights policy commitments and an effective grievance mechanism in line with the OECD *Guidelines* (UK, 2019). The case is ongoing. It is important to note that the acceptance of the case at this stage means that the UK NCP will offer mediation/conciliation and does not indicate any determination of the case. The activities in Cambodia have also been examined by NHRCT and are the subject of an ongoing case in the Thai courts (see Bangkok Post, 2019).

Chapter 11 outlines the sectoral composition of Thai outward investment by type of investments (greenfield FDI vs. cross-border M&A). Greenfield projects occur predominantly in infrastructure and manufacturing. The composition of M&A deals ranges from manufacturing (mainly food and beverage) and mining to services (particularly finance) (see Figure 11.4). It is important for Thai investors to have a full and comprehensive picture of the impacts of their business operations as well as their risk exposure, and to ensure that social and environmental risks are considered in the overall risk management calculus.

Social risks in the infrastructure sector are notable. Globally, construction ranks second only to domestic work for prevalence of forced labour, at 18% and 24% respectively (ILO and Walk Free Foundation, 2017). Transparency International estimates that corruption is a bigger problem in construction than mining, real estate, energy or the arms market. Furthermore, the environmental and social impacts of concrete – a major input – are well-documented. Among materials, only coal, oil and gas are a greater source of greenhouse gases; and mining of sand, without which concrete cannot be made, is reportedly increasingly controlled by organised crime groups (see The Guardian, 2019). Equally, environmental aspects are significant. For example, the International Transport Forum (ITF) estimates that CO_2 emissions from transport (e.g. roads, rail, aviation, maritime, freight/logistics) could increase 60% by 2050, despite the significant technological progress already assumed in baseline modelling scenarios (OECD/ITF, 2017).

A 2019 report by the UN Office of the High Commissioner for Human Rights and the Heinrich Boell Foundation surveyed human rights risks and opportunities in the energy, transport and water sectors at the macro-, meso- and project levels and published the results in a joint report entitled *The Other Infrastructure Gap: Sustainability: Human Rights and Environmental Dimensions*. The research showed that large infrastructure projects have been associated with serious and sometimes irreparable harm to people and the environment. In many cases, human rights risks were ignored or downplayed in the project risk calculus, and were repeated in future projects. OHCHR has cautioned that without explicitly and systematically acknowledging and addressing human rights in infrastructure policy frameworks and practices, at best the enormous potential of infrastructure as a facilitator for the SDGs will not be realised, and at worst infrastructure development will actually undermine the SDGs. One of the main recommendations of the report was that those implementing and financing large infrastructure projects carry out explicit due diligence on human rights (see UN OHCHR-hbs, 2019).

It is imperative that Thai investors aboard are aware of the expectations of the Thai government when it comes to RBC at an early stage. Clear information on the UN Guiding Principles and the OECD *Guidelines* should be communicated as part of the services that the Federation of Thai Industries and the Board of Trade provide for outward investments. These services include organising overseas business visits, business seminars and dialogue with business associations of other countries. This information and expectations should also be integrated in BOI's Thailand Overseas Investment Centre under the Thai Overseas Investment Promotion Division (see also Chapter 11). Activities by BOI include in-depth studies on investment prospects in ASEAN, seminars on laws and regulations for doing business overseas, and identifying opportunities in growth industries. Thailand's Export-Import Bank, EXIM Thailand, also provides support for creating investment opportunities in new frontier markets. In 2017, EXIM Thailand set out a CSR policy in 2017 reviewed against the ISO 26000 standard. It covers major RBC themes such as human rights and labour rights, and makes further commitments toward promotion of financial products and services for sustainable consumption and capacity building of staff. It would be worthwhile however to assess whether its current risk management and due diligence processes are aligned with international RBC standards like the OECD due diligences guidance and provisions in the UN *Guiding Principles*. The added benefit of doing so would be in connecting these risk management efforts to the ongoing efforts to improve corporate governance as the bank already uses existing OECD standards in that regard. Additionally, SEC has an important role to raise awareness of RBC in this context. The capacity building programme by SEC planned to implement the Thai NAP is expected to cover the issue of Thai investments abroad.

The government is already pursuing a range of different initiatives that seek to address these problems but further progress in implementation would improve overall confidence and give affected communities a venue for raising issues. Thai overseas investment is a topic in the Thai NAP.

Pursuing integration of RBC in regional trade and investment initiatives

Regional efforts to boost connectivity, trade and investment are key ingredients for Thailand's ability to implement its ambitious national development plans. The ASEAN Economic Community (AEC) has been a catalyst for, and will continue to support, intra-regional investment. Increasingly strong political ties with China and concrete infrastructure development plans could help Thailand become a regional logistics hub and lower related costs. Strong cooperation with China is also strengthening Thailand's role in the implementation of the Master Plan on ASEAN Connectivity 2025.

Thailand's ambitions to be a regional leader could be particularly impactful in the context of integrating RBC considerations in the various regional trade and investment agreements and initiatives. The OECD Policy Framework on Investment recognises that societies can benefit from investment in many ways, but the relationship between the volume of investment and the benefit from that investment is not necessarily linear. More investment does not automatically lead to productivity growth, more competitive local firms or a more inclusive workforce. In certain cases, particularly when there are largescale negative impacts associated with projects, investment can make host economies worse off. The need to balance economic growth objectives with environmental and social considerations becomes even more important in a context where policy and legal frameworks are still evolving. An integral part of establishing policy coherence and alignment on RBC means including references to expectations on RBC in international economic instruments (e.g. trade and investment policy, export credit agreements, official development assistance), as well as clearly communicating those expectations.

Thailand is well-positioned to build on the outcomes of its 2019 ASEAN Presidency, in line also with its national strategic objectives on RBC, and to advocate for integration of international RBC instruments and tools in this context. It would be particularly important to integrate RBC in the discussions related to the Regional Comprehensive Economic Partnership (RCEP) agreement and its various implementation plans. While the RCEP text was not available as of November 2019, the Joint Leader's Statement recognises the intention for RCEP to benefit businesses, as well as workers, producers, and consumers (RCEP, 2019). Nevertheless, concerns have been raised by civil society throughout the years about the lack of specific environmental and social protection provisions in the text of the agreement as well as the lack of comprehensive impact assessments.[9] For example, the agreement is not expected to include dedicated chapters on labour and the environment. At the June 2019 meeting of the ASEAN Inter-governmental Commission on Human Rights (AICHR) *Interregional Dialogue: Sharing Good Practices on Business and Human Rights,* AICHR representatives noted the relevance/intersectionality of RBC for more sustainable and impactful free trade agreements during a discussion focused on RCEP and AEC (AICHR, 2019).

Explicitly integrating RBC in this context would be in line with international trends. For example, the EU trade strategy *Trade for all: Towards a more responsible trade and investment policy* uses RBC as a pillar. Specific references to RBC have been integrated in the recent EU agreements. For example, the EU Free Trade Agreement (EU FTA) includes specific language on RBC, CSR and sustainable development, following dominant treaty practice globally in recent years. It refers to the promotion and co-operation on CSR in the Trade and Sustainable Development chapter (art. 9 and 14), with the OECD *Guidelines* specifically mentioned in art. 9 as the relevant international standard. Provisions related to RBC are also included in the chapter on state-owned enterprises (SOEs) (art. 5), which underlines co-operation efforts to ensure that SOEs observe internationally recognised standards of corporate governance (EU, 2016a). The EU published additional analysis of human rights and sustainable development considerations of the FTA in 2016 that elaborated on the implementation and monitoring of the relevant provisions, including as related to RBC (EU, 2016b).

Investment protection and promotion of RBC are not mutually exclusive goals. A new emphasis in recent investment treaty-making has been on sustainable development and RBC considerations (see also discussion in Chapter 8). OECD research shows that three out of four international investment agreements concluded in 2008-13 include language on RBC (mainly free trade agreements with investment protection provisions) and virtually all of the investment treaties concluded in 2012-13 include such language (Gordon et al., 2014). The research shows that the major functions of such treaty language are, in the order of prevalence: (i) to establish the context and purpose of the treaty and set forth basic RBC principles through preamble language; (ii) to preserve policy space to enact public policies dealing with responsible business conduct concerns; and (iii) to avoid lowering standards, in particular relaxing environmental and labour standards for the purpose of attracting investment.

Some of these innovations are also found in ASEAN. Out of the 16 RCEP partners, ASEAN policymakers have already recognised the importance of RBC in certain policy areas. This is true both at the regional level, as seen by the inclusion of RBC expectations in various ASEAN Blueprints, but also at the national level, even if specific government actions vary widely across the region. A promising trend has been the inclusion of RBC provisions in a recent wave of new investment strategies and laws. Australia, Japan, Korea, and New Zealand are adherents to the OECD *Guidelines for Multinational Enterprises*. China and India have also recognised importance of RBC. China is working with the OECD on RBC and India has worked with the OECD in the context of the garment and footwear sector work. RBC expectations can also be a legal requirement for investors. For example, Australian investors are subject to the Australian Modern Slavery Act.

Several objectives envisioned for the integrated ASEAN Economic Community will depend in large part on improving the business environment beyond investment liberalisation. While the export-oriented investment strategy implemented so far has made ASEAN one of the premier investment destinations in the world, it has not always led to lasting local capabilities. As ASEAN policymakers continue to build a more resilient, inclusive, people-oriented and people-centred community, one integrated with the global economy, RBC can play a role in increasing absorptive capacity and participation in global value chains (GVCs), while contributing to meeting the future competitiveness and skills challenges head on (for more analysis in this regard, see OECD, 2019a).

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Notes

[1] Several activities have taken place in this context over the course of 2018 and 2019. Notably, Thailand hosted the first-ever OECD Global Forum on RBC outside of Paris on 12-13 June 2019. The event took place as the *Responsible Business and Human Rights Forum* and was co-organised by the Royal Thai Government, OECD, UNDP, UN ESCAP, ILO and ASEAN Intergovernmental Commission on Human Rights Thailand, with the participation of the Working Group on Business and Human Rights. The Forum took place in the framework of the *Bangkok Business and Human Rights Week*, which also included the ASEAN Interregional Dialogue on Business and Human Rights (10-11 June 2019) and the ASEAN Institutional Investors Forum (14 June 2019). For more information, see the Summary Report.

[2] Governments are also increasingly inclined to exploit the scale of assets and leverage of financial institutions to support global sustainability objectives. See for example 2017 G20 Hamburg Climate and Energy Action Plan for Growth which highlights the need to align financial flows (from both public and private institutions) to promote environmental goals and achieve the objectives of the SDGs.

[3] For example, a 2018 survey by the Alternative Investment Management Association (AIMA) of 582 institutional investors worldwide showed that out of those who reported implementing an "ESG strategy", 47% use exclusionary strategies, while only 21% practice full integration of ESG risk factors. Moreover, many financial institutions do not have any meaningful strategy in place for responding to significant environmental and social risks. In this respect, a 2018 ShareAction study of the world's 100 largest pension funds found that 60% of funds have little or no approach to environmental risks.

[4] According to research from Bloomberg Intelligence, "so far in 2020, 59% of U.S. ESG ETFs are doing better than the S&P 500 Index while 60% of European ESG ETFs have beat the MSCI Europe Index". See Claire Ballentine (31 March 2020), "ESG Stock Resilience Is Paving the Way for a Surge in Popularity" *Bloomberg* https://www.bloomberg.com/news/articles/2020-03-31/esg-stock-resilance-is-paving-the-way-for-a-surge-in-popularity. See also Saijel Kishan and Emily Chasan (13 March 2020), "Older ESG Funds Outperform Their Newer Rivals in Market Tumult", *Bloomberg* https://www.bloomberg.com/news/articles/2020-03-13/older-esg-funds-outperform-their-newer-rivals-in-market-tumult?sref=wingcnxe and Jon Hale (16 March 2020), "Sustainable Equity Funds are Outperforming in Bear Market", *Morningstar* https://www.morningstar.com/articles/972475/sustainable-equity-funds-are-outperforming-in-bear-market

[5] For example, Blackrock, NBIM, APG were key partners in developing the paper. Additionally, investors representing USD 1.9 trillion in AUM have also released a formal statement endorsing the recommendations in the paper as best practice. See https://investorsforhumanrights.org/sites/default/files/attachments/2019-04/IAHR_Making%20Finance%20Work%20for%20People%20and%20Planet_FINAL.pdf

[6] In 2018 the Federation of the Dutch Pension Funds, non-governmental organisations (NGOs), trade unions and the Dutch government signed a Responsible Business Conduct Agreement on responsible investment by Pension Funds rooted in the recommendations of the paper. See: https://www.imvoconvenanten.nl/pensioenfondsen?sc_lang=en

[7] See https://data.consilium.europa.eu/doc/document/ST-7571-2019-ADD-1/en/pdf

[8] For more information, see the new OECD project on RBC and public procurement http://www.oecd.org/governance/public-procurement/procurement-and-rbc/.

[9] See for example an analysis in the Diplomat (https://thediplomat.com/2017/10/5-hidden-costs-of-the-rcep-to-people-and-planet/) or in the Manila Times (https://www.manilatimes.net/2018/08/03/opinion/analysis/asias-evolving-free-trade-deal-may-not-benefit-workers/426159/426159/)

10 Promoting investment for green growth

This chapter describes Thailand's policy framework to support investment for green growth, providing an overview of the state of play and progress made in supporting green investment. It is structured around the questions on green growth and investment raised in the updated OECD Policy Framework for Investment and the OECD Policy Guidance for Investment in Clean Energy Infrastructure. It also builds on the discussions on policy choices to support the transition to a low-emissions, climate-resilient economy in OECD (2017) Investing in Climate, Investing in Growth. The chapter reviews the current policy framework in place to promote green growth and climate change, including policies that help to improve the environmental quality of investments in general, and examines existing efforts to engage the private sector to scale up investment in renewable energy. It also highlights issues related to financing green projects in the country.

Summary

Green growth and green investment will be key to meeting the vision for Thailand 4.0, especially in the context of COVID-19 recovery. A green growth pathway allows Thailand to grow and develop while ensuring that natural assets continue to provide resources and environmental services for future generations, and that growth pathways remain resilient to global shocks such as climate change or future pandemics. A key step in pursuing green growth is to catalyse investment and innovation in environmentally sound technologies and infrastructure which helps to sustain growth, gives rise to new economic opportunities and promotes green jobs (OECD, 2011). In addition, with the increasing need for global action to address climate change, investment for green growth must promote a rapid transition to a low-emissions and climate resilient development pathway (OECD, 2017a). Investment for green growth includes, among other things, investment in infrastructure – such as renewable energy, energy efficiency, water purification and distribution systems, transport and housing – as well as in conservation and efficient usage of natural resources, and waste management (OECD, 2015b).

A green investment framework has much in common with a general policy framework for investment, but an investment-friendly policy framework does not necessarily result in green investment unless certain elements are also in place. These include: a strong governmental commitment at both the national and international levels to support green growth and to mobilise private investment for green growth; policies and regulations to provide a level playing field for more environment friendly investments, such as through the use of pricing instruments; policies to encourage more environmentally responsible business conduct (also see Chapter 9); an institutional capacity to design, implement and monitor policies to foster green growth objectives; and financial mechanisms for green investment (OECD, 2015a).

Thailand's vision of transitioning its economy into an innovation and technology driven 'Thailand 4.0', especially through its 'bio, circular and green (BCG)' economy model will not be achievable without significant progress towards green growth. This is especially relevant in the context of post-COVID recovery, where Thailand must restart its economy and create local employment, while ensuring underlying growth drivers remain resilient to future shocks. The major gains made in growth and development in the last few decades were accompanied by the unstainable and unchecked use of resources, which in turn has hampered the country's efforts to promote environmental sustainability. Rapid urbanisation, industrialisation and infrastructure development have exacerbated air and water pollution, with Bangkok recording hazardous levels of air pollution in the last two years. Thailand generates significant waste, and a lack of adequate waste management continues to result in plastics dumping and pollution in water bodies. Climate change exacerbates existing environmental issues, with Thailand highly vulnerable to changing temperature and rainfall patterns. Increasing greenhouse gas emissions from the use of fossil fuels will need to be checked.

Recognising these challenges, Thailand has made great strides in developing a comprehensive and consistent policy framework for green growth and environment and in promoting green investment. The BCG economic model puts green growth-related concepts at the heart of continued development. Green growth is reflected in Thailand's development strategies, and consistent climate mitigation targets are in place. Thailand's policy framework for environmental protection has a long history of implementation, and investment incentives have been put in place to promote investment in green sectors and activities. In the energy sector, Thailand is a regional success story in promoting private investment for renewable energy, and has used public finance strategically to mobilise commercial financing for green investments.

Thailand's focus must be on implementing and strengthening the policies on green growth that are in place. Key to this will be ensuring that environmental objectives are systematically integrated across Thailand's broader policy framework for investment. Some of the proposed actions can be addressed unilaterally by relevant agencies (short- and medium-term priorities), while others require longer term and inter-ministerial coordination.

Policy recommendations

Short- and medium-term policy priorities:

- Consider scaling down or phasing out investment incentives for ‘non-green’ activities such as the manufacturing of non-biodegradable plastics or generation of electricity using fossil fuels. Providing incentives to both green and non-green activities reduces the ultimate effectiveness of efforts to promote green investment. For example, gains made by promoting investment in green sectors, such as the manufacturing of biodegradable plastics or generation of renewable energy, are negated by promoting investment in non-biodegradable plastic packaging or coal-fired power. A possible first step could include a mapping of green and ‘non-green’ activities building on emerging taxonomies for green finance.
- Assess the applicability of creating targeted financing vehicles to mobilise financing for green investment beyond the energy sector, building on lessons learned from the Energy Efficiency Revolving Fund. Thailand has had success with using budget funds in specialised structures to encourage local banks to engage in green lending for energy, and such experience could be built on to promote green lending for waste, water, and transport projects.

Long-term policy priorities:

- Establish a legal system for the application of Strategic Environmental Assessments, so that environmental considerations can be systematically integrated along with social and economic considerations in policy planning and decision making related to sectoral or geographical issues. This can also help avoid downstream conflict with local communities and other actors during the project environmental impact assessment stage. Risk-based responsible business conduct due diligence, according to international standards such as the OECD *Due Diligence Guidance for Responsible Business Conduct*, should be actively encouraged and promoted.
- Consider introducing pricing instruments, such as an environmental or ‘green’ tax, to put a price on pollution and incentivise efforts to increase the efficiency of resource use. Such instruments are considered key to green growth policies globally, and help to shift producer and consumer behaviour towards more environmentally beneficial activities. These taxes are prevalent across most OECD countries, with environmental tax revenues estimated to represent, on average, 2% of GDP across OECD member countries. Thailand should also continue its efforts to develop other pricing instruments by scaling up recent pilots to establish an emissions trading system.
- Develop a roadmap to support greening of the national financial system, including the tracking and disclosure of ESG risks and impacts (see also Chapter 9). Building on the new roadmap on sustainable capital markets, Thailand should continue to invest in building a cohesive framework, through its sustainable finance taskforce and working group, bringing together the financial sector, the insurance sector and listed companies, to encourage more targeted performance on green finance and the SDGs. While efforts to establish a system for green bonds are beginning to pay off, a national standard or taxonomy, based on the ASEAN Green Bond Framework and national guidelines, could add further transparency for issuers and investors. Lessons can be learned from the EU Action Plan on Sustainable Finance which lays out a roadmap for greening EU’s financial system, including a taxonomy, labelling for financial products and measures to increase the transparency of reporting. Another example is China’s guidelines for establishing a national green finance system, which includes a classification of eligible activities and promotes clear reporting of green credits, among other measures. OECD tools for responsible business conduct in the financial sector can be useful for these efforts.

Green growth and investment in Thailand: challenges and opportunities

Growth has come at the cost of growing emissions and pollution

While Thailand's economic growth has slowed in the last decade, the country has made strides in reducing poverty and promoting socio-economic development. People living in poverty fell from 67% in the mid-1980s to 10.4% in 2014, with close to 27 million people estimated to have moved out of poverty during this period (World Bank, 2018). Major improvements have been made in accessibility of water and sanitation services, as well as in promoting connectivity across the country. However, as for neighbouring ASEAN countries, growth and development has come at the cost of environmental performance and if left unabated, Thailand's environmental concerns will affect its efforts to promote sustainable development going forward.

Rapid urbanisation, industrialisation and infrastructure development have exacerbated air and water pollution. Thailand's urban population has grown from 31% in 2000 to 49% of the total population in 2019, with roughly a fifth of its population residing in and around the Bangkok in 2014 (OECD, 2015a). Air pollution has been increasing year on year, with hazardous pollution in Bangkok in 2018 and 2019 resulting in a closure of businesses and schools.[1] Major air pollutants in big cities of Thailand are PM2.5, PM10 and Ozone. In 2018, the level of PM2.5 in Bangkok and PM10 in Saraburi sometimes exceeded the national standards while the ozone level in Songkhla increased. Transport is a major source of pollution in urban areas – the number of vehicles registered in Bangkok, for example, almost doubled from 4.5 million to 9.4 million between 2000 and 2016 (OECD, 2018a). Other major sources of poor air in urban areas include particulate matter from construction of buildings as well as industry (e.g. cement, stone quarries etc.), while in rural areas forest fires and agricultural burning contribute extensively to haze.

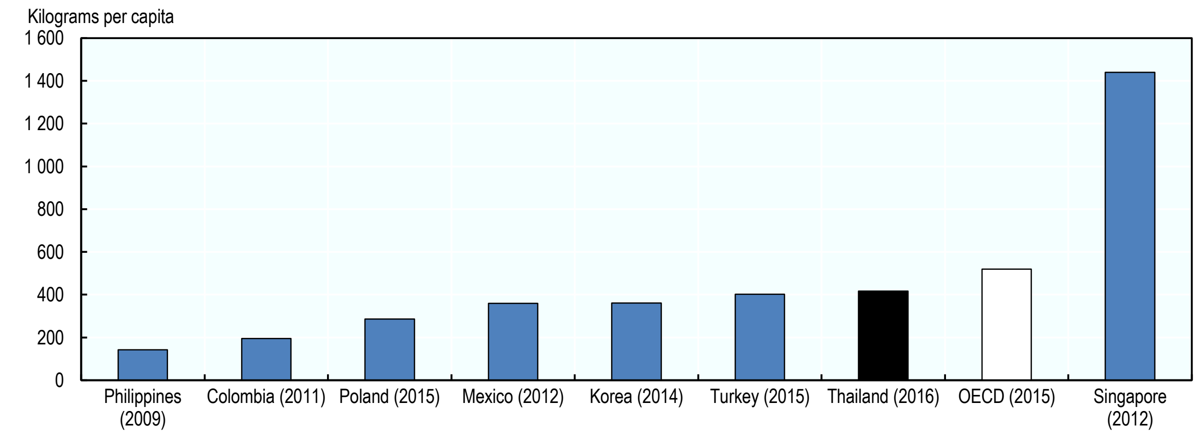
Unstainable resource use practices also exacerbate water and land pollution and threaten ecosystem health. Thailand generates more municipal solid waste than in many comparator countries (Figure 10.1), and a lack of proper waste management and disposal is a major cause of pollution. In 2018, an estimated 27% of municipal solid waste was disposed of improperly, through illegal burning or dumping on land and in water bodies (Pollution Control Department, 2019). Marine plastic pollution has affected the quality of Thailand's beaches and coastline, and moreover, Thailand is one of five countries responsible for over half of all land-based plastics in the ocean globally (McKinsey and Ocean Conservancy, 2015). Another persisting environmental challenge is a loss of biodiversity, despite Thailand having made major strides in improving forest cover. Many of the country's species face extinction, largely driven by land use change, illegal trafficking of wildlife and pollution.

Thailand remains especially vulnerable to climate change

Alongside regional neighbours Myanmar, Viet Nam and Philippines, Thailand is highly vulnerable to the impact of climate change. The Global Climate Risk Index ranks Thailand as eighth out of the ten most affected countries in the world to extreme weather-related events between 1999 and 2018, with resulting losses estimated at almost 1% of GDP, per year, over the same period (Eckstein et al., 2019). A historical increase in average annual temperatures and rainfall has been seen in the country over the last decade, and future projections show these will only continue (World Bank, 2020). Annual temperatures are expected to increase by between 1.4 to 1.6°C by the 2060s, and average annual rainfall by between 28% and 74% by the 2090s. The agriculture sector is expected to bear the brunt of the impact, affecting the livelihoods of farmers and rural communities. Expected sea level rise is of concern considering the location of Bangkok and key industries along the exposed coastline of the country. Recognising these challenges, investment in climate change adaptation should be a priority for public investment in climate change.

Figure 10.1. High municipal waste levels compared to many of its peers

Municipal waste per capita in Thailand and comparator countries (latest available year)

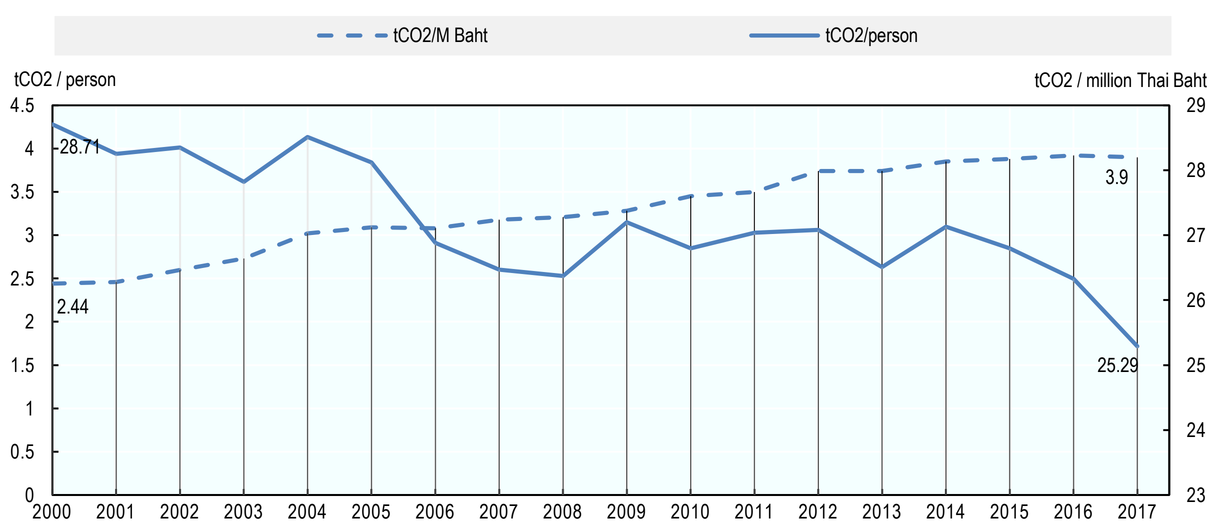


Source: OECD, 2018a

At the same time, Thailand's must continue to transition to a low-carbon development pathway, and equal efforts are needed to invest in reducing greenhouse gas emissions. Net greenhouse gas emissions from fossil fuels and land use change have remained relatively stable over the last decade, as Thailand's efforts to promote reforestation and improve carbon sinks have largely offset increasing emissions. However, in absolute terms, greenhouse gas emissions from the use of fossil fuels have risen alongside growth and development. Per capita CO_2 emissions from the use of fossil fuels have increased by almost 60% between 2000 and 2018 (Figure 10.2). At the same time, the CO_2 intensity of Thailand's economy has also improved significantly.

Figure 10.2. Rising CO_2 emissions from the use of fossil fuels

Greenhouse gas emissions from fossil fuel sources in Thailand, per capita and per unit GDP, 2000 to 2017



Source: Energy Planning and Policy Office

Investing in green growth is key to achieving the vision of Thailand 4.0

The vision of 'Thailand 4.0' is an economic growth model that supports continuing growth and development, while promoting greater economic efficiency and modernisation. Greening growth to reduce the unsustainable use of resources and pollution and addressing climate change will be key to this vision. Infrastructure development, especially in the Eastern Economic Corridor (EEC), is a flagship of the Thailand 4.0 framework. Thailand currently faces an overall gap in infrastructure investment. Cumulative infrastructure investment needs for the country are estimated at USD 494 billion between 2016 and 2040, and considering current investment levels, Thailand faces a shortfall of USD 100 billion over the same period (Oxford Economics, 2017). Green investment from public and private sources will need to be scaled up, especially for green infrastructure.

The need to reduce greenhouse gas emissions and pollution, increase the efficiency of resource use and support the management of natural capital all provide potential opportunities for investment. Renewable energy, for example, has attracted significant interest from private investors in recent years. Installed power generation from renewable energy sources like wind, solar, biomass etc. has tripled in the last two decades, increasing from 2986 MW in 2000 to 10,410 MW in 2018 (Figure 10.3) (IRENA, 2019). There is still significant potential to scale up green investment for renewables, with an estimated USD 1.3 billion annual investment needed by 2036 to deliver on the government's renewable energy targets (IRENA, 2017). Increasing energy demand presents another opportunity to scale up investments in energy efficiency in buildings and industry. Final energy consumption in Thailand grew at 5% per year between 1990 and 2015, and is projected to continue growing at just under 3% per year up to 2040 (Padrem, 2019). The sectors with the highest potential to achieve energy savings are transport and industry.

Thailand's priorities and international commitments to green growth

A strong government commitment to support green growth, underpinned by a coherent policy framework and clear targets, provides investors with encouraging signals regarding the government's ambitions for green growth. Setting clear, long term, and legally binding policy and regulatory frameworks to mainstream and encourage green growth are key to attracting private investment. Such frameworks are critically important to mitigate the risks related in investment in green infrastructure and new technologies. Such a framework should include a comprehensive and coherent framework of policies related to the environment and green growth, integrating of environmental targets and ambitions into sector policies and plans, and engagement and commitments towards multilateral environmental agreements.

Green growth and climate change policy framework

Thailand's development plans emphasise green growth

Thailand has put in place a comprehensive policy and regulatory framework to promote green growth and environmental sustainability. The cornerstone of efforts in this area are Thailand's long-term (20-year) Policy and Prospective Plan for Enhancement and Conservation of National Environment Quality 2017-37 and its medium-term (5-year) Environment Quality Management Plan (EQMP) 2017–22. The 2017-22 Plan specifies a vision to have 'good environment quality' as a step towards green growth.

The importance of green growth is also well reflected in the 20-year National Strategy (2018-2037) with its national slogan 'Security, Prosperity, Sustainability'. The strategy promotes the idea of 'Thailand 4.0' and is an effort to move future growth from heavy and light industry to industries dependent on innovation and digital technologies (see Chapter 2 for an overview). Promoting environmental protection is one of four objectives of this strategy, with an emphasis on promoting low-carbon development and smart cities. The government's 'bio, circular and green (BCG)' economy model includes a clear focus on green growth and environmental sustainability, building on the long established ‘Sufficiency Economy’ principles that have guided development strategies in the past.

Green growth is also clearly mentioned in the 12th National Economic and Social Development Plan (2017-22) where one of five objectives of the plan is to ‘preserve and restore natural resources and environmental quality in order to support green growth’. Under the 12th Plan, the Strategy for Environmentally-friendly Growth for Sustainable Development outlines the government’s overarching plans on the environment and is the cornerstone of efforts to promote green growth. Recognising both the progress made – such as in reducing deforestation – and continuing environmental challenges, the strategy outlines four areas of focus for the country in 2017-22. These include conservation of natural resources and biodiversity, management of water resources, reducing environmental pollution and managing waste, and addressing climate change mitigation and adaptation. Key targets in the strategy include forest cover (to ensure that forest cover is 40% of land area), waste management (at least 75% of waste generate by communities properly treated or reused), on water and air quality (air quality in haze crisis zones to fall within national pollution standards) and on climate change mitigation and adaptation. Promoting private investment and encouraging environmentally friendly businesses are emphasised throughout the strategy. For example, the sustainable use of biodiversity by promoting value creation from biodiversity resources is emphasised alongside conservation. Similarly, there is a focus on green labelling and on fiscal reform to promote environmental protection. Green growth is also encouraged through Thailand’s Sustainable Consumption and Production Roadmap 2017-2036 which includes actions to strengthen the sustainability of Thai production (for example, by promoting resource use efficiency across companies and communities) as well as consumption (for example, by promoting green labelling, green public procurement etc.).

Despite a consistent overarching framework in place to promote environmental sustainability and green growth, a more systematic consideration of alignment of development plans and policies with environmental objectives is needed. For example, incentives to promote car ownership could undermine the ambitions on reducing air pollution in the 12th Plan (Sondergaard et al., 2016). Similarly, while promoting projects in the EEC, a strategic environmental assessment could prevent conflict at the project level. Currently, the Board of Investment (BOI) already has in place screening processes when considering investment projects. For example, investors are required to provide a preliminary assessment of environmental impact when submitting a proposal, and are encouraged to use new machinery or equipment, or justify the use of used equipment. Such criteria and processes could be built on to support further greening of the EEC.

Consistent climate targets define Thailand’s mitigation ambition

Thailand’s policy framework for climate change is centred around its Climate Change Master Plan (2015-2050) which has been integrated into national plans such as the 20-year National Strategy, the National reform Plans and the 12th Plan. Mitigation and adaptation actions are emphasised equally. Through these plans, Thailand committed to reduce greenhouse gas emissions from energy and transport sectors by 7% by 2020 against a Business As Usual (BAU) scenario, and in 2018, it was reported that this target had been met early (Office of Natural Resource and Environmental Policy and Planning, 2017). In its Intended Nationally Determined Contribution (INDC) submitted to the UNFCCC in 2015, Thailand committed to reducing greenhouse gas emissions reductions by 20% by 2030, or 25% by 2030 with adequate international support and technology transfer. This target will be implemented through an NDC Mitigation Roadmap and specific plans for transport, energy, waste and industry sectors. Thailand has also made headway in promoting climate change adaptation through its National Adaptation Plan, and sectoral plans in target sectors (e.g. health, agriculture). Compared to neighbouring ASEAN countries (Table 10.1), Thailand has adopted an ambitious greenhouse gas reduction target based on voluntary national actions (i.e. not conditional on external support).

Table 10.1. Climate change mitigation targets in selected ASEAN countries

Country	Climate change mitigation	Renewable energy	Energy efficiency
Cambodia	Reduce GHG emissions 27% from baseline emissions by 2030 with international support.	Increase hydropower capacity to 2 241 megawatts by 2020.	
Indonesia	Reduce GHG emissions 26% by 2020 and 29% by 2030 from BAU levels, and 41% by 2030 with international support.	Increase share of "new and renewable energy" in primary energy supply to reach 23% by 2025 and 31% by 2050.	Reduce energy intensity by 1% per year to 2025.
Malaysia	Reduce GHG intensity of GDP by 35% by 2030 from 2005 level, increase to 45% reduction with enhanced international support.	Increase capacity of renewables to 2 080 MW by 2020 and 4 000 MW by 2030.	
Philippines	Reduce GHG emissions by 70% from BAU level by 2030 with the condition of international support.	Triple the installed capacity of renewables-based power generation from 2010 level to 15 GW by 2030.	Reduce energy intensity 40% by 2030 from 2010 level.
Thailand	**Reduce GHG emissions by 20% from BAU level by 2030**, increase to 25% with enhanced international support.	Increase share of renewables to 30% in total final energy consumption by 2036; increase share of renewables-based power to 36% in generation capacity and to 20% in generation by 2037.	Reduce energy intensity by 30% by 2036 from 2010 level.
Viet Nam	Reduce GHG emissions by 8% by 2030 and by 25% from BAU levels with international support.	Increase the share of non-hydro renewables-based generation capacity to 12.5% by 2025 and 21% by 2030.	Increase commercial electricity savings to more than 10% of total power consumption by 2020 relative to BAU.

Source: (IEA, 2019)

Pricing instruments, such as environmental taxes, could help put a price on pollution

Pricing-related policy instruments – such as environmental taxes – are key to promoting green growth as they drive broad actions to reduce environmental damage and provide incentives to increase efficiency, promote green investment and encourage innovation (OECD, 2015c). Environmental taxes ensure that market prices reflect costs related to environmental damages and helps to shift producer and consumer behaviour towards more environmentally beneficial activities. Environmentally related taxes are relatively common across OECD, with revenues from these taxes estimated to represent, on average, 2% of GDP (OECD, 2015c and 2017b). In some countries, such as Denmark and the Netherlands, this share is higher, over 3.5% of GDP. Within Southeast Asia, Viet Nam is one of the first countries in the region to introduce an environmental tax. Established in 2010, the Environment Pollution Tax includes taxes on fossil fuels as well as other environmentally harmful goods such as pesticides and herbicides, HCFCs and plastic bags (OECD, 2018c).

Thailand has made efforts to consider the role of environmental taxes, but to date these have not been implemented on a large scale. The Excise Department proposed a 'green tax' approach to base taxes on the 'polluter pays' principles in 2011[2]. This would encourage tax rates to be based on environmental costs, for example, on the efficiency of machinery or emissions levels of cars. More recently, there has been discussion on the need for a tax on e-waste to reduce pollution.

Pilot carbon pricing mechanisms must be scaled up

Carbon pricing is Thailand's primary channel to encourage private investment in reducing greenhouse gas emissions. Thailand has engaged in international carbon market mechanisms, through the Clean Development Mechanism (CDM) as well as international voluntary carbon markets. As of January 2020, 154 CDM have developed by private actors in the country (UNEP DTU, 2020). Thailand has also initiated efforts to establish domestic carbon market mechanisms. The Thailand Voluntary Emission Trading Scheme was developed between 2013 and 2016, through the establishment of monitoring systems and implementation of two successive pilot phases. The first pilot phase was initiated in 2014 across the power and petrochemical sectors, involving eleven power plants and seven petrochemical plants (Smits, 2017). The second pilot phase is testing the registry and trading platform (ICAP, 2019). Based on these pilots, a roadmap and legal framework are being developed for consideration by the government.

The Thailand Carbon Offsetting Program was also established to enable organisations and individuals to offset their carbon emissions by purchasing carbon credits from the voluntary market. The progress being made in testing and developing carbon market mechanisms in Thailand is encouraging, although most schemes are still in an early stage of implementation or require participation on a voluntary basis. Further efforts will need to take account of recent guidelines adopted under Article 6 of the Paris Agreement. Efforts to develop a legal framework and make such schemes obligatory, especially for high emissions sectors, will be key to their scale up.

Policy framework for environmental protection

Thailand has an established regulatory system for environmental impact assessment of projects which has been in place for over four decades. According to the Enhancement and Conservation of the National Environmental Quality Act (NEQA) B.E. 2535 (1992) and the NEQA (No. 2), B.E. 2561 (2018), Environmental Impact Assessments (EIA) or Environment and Health Impact Assessments (EHIA) are required for an investment depending on its type and size, as determined by law.

EIAs and EHIAs are carried out by consultants registered with the Office of Natural Resources Policy and Planning (ONEP), and are reviewed by an expert committee appointed by the National Environment Board. Once approved, relevant permits are granted.

Despite its long history, the EIA system in Thailand – like in other countries in the region – faces ongoing challenges, especially related to the mitigation and monitoring measures identified in EIAs. In addition, public participation, throughout the EIA process can be further strengthened (Sondergaard et al., 2016). The NEQA B.E. 2561 (2018) responds to this by enhancing monitoring provisions for EIA and EHIA. For example, NEQA B.E. 2561 (2018) increases the role of permitting agencies and provincial MNRE offices in monitoring EIAs mitigation measures and imposes a fine (not exceeding THB 1 million) if EIA monitoring reports are not submitted by project owners.

Thailand has also taken steps to develop a framework for the application of Strategic Environmental Assessment (SEA). SEAs have been conducted sporadically for policies and plans in the country since 2005 and are a useful process to integrate environmental objectives across development programmes in sector-level plans and policies. Limitations of the EIA process in identifying cumulative environmental impacts across multiple projects, or those arising as a result of development planning at a regional level, have increased the awareness of the role of SEA in Thailand. A current gap, however, is that SEAs are not yet a legal requirement though SEA regulations are being drafted by the National Economic and Social Development Council (NESDC).

Thailand's international commitments on green growth

Thailand participates in and has ratified most major multilateral environmental agreements (Table 10.2), including the three Rio Conventions: the Convention on Biological Diversity (CBD) in 2003, UN Convention to Combat Desertification in 2001, and United Nations Framework Convention on Climate Change (UNFCCC) in 1994. Thailand ratified the Paris Agreement under the UNFCCC in 2016, and submitted its Intended Nationally Determined Contribution to the convention in 2015.

Table 10.2. Multilateral environmental agreements (MEAs) ratified by Thailand

MEA	Year of ratification / accession
ASEAN Agreement on the Conservation of Nature and Natural Resources	1997
ASEAN Agreement on Trans boundary Haze Pollution	2003
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	1997
Cartagena Protocol for Bio-safety	2005
Convention on Biological Diversity	2003
Convention on International Trade of Endangered Species of Wild Fauna and Flora	1983
Kyoto Protocol to UNFCCC	2002
Montreal Protocol on Substances that Depletes Ozone Layer	1989
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the CBD	2012*
Paris Agreement under UNFCCC	2016
Ramsar Convention on Wetlands	1998
Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	2002
Stockholm Convention on Persistent Organic Pollutants	2005
UN Convention on the Law of the Sea	2011
UN Convention to Combat Desertification	2001
United Nations Framework Convention on Climate Change (UNFCCC)	1994
Vienna Convention for the Protection of the Ozone Layer	1989

Note: *Thailand is a signatory to the Nagoya protocol since 2012, but ratification / accession is pending.
Source: Adapted from https://www.informea.org/en

Policy approaches to promote investment in green growth

Investment incentives to promote green industries

Thailand, like neighbouring Malaysia and Viet Nam, provides investment incentives to promote green growth and green investment. Thailand uses incentives to promote new green businesses and projects, as well as to encourage ‘non-green’ projects to take up more efficient technologies and improve environmental performance.

Under the 2015-21 investment promotion strategy, promoting activities that are ‘environmentally-friendly, save energy or use alternative energy’ is one of the objectives of the government (BOI, 2019). Green sectors actively promoted by BOI through the strategy include renewable energy and biodegradable plastics. Incentives include tax-based incentives, such as an exemption on corporate income tax or import duties, and non-tax-based incentives, such as waiving restrictions on foreign ownership and granting permission to bring in skilled foreign workers (Table 10.3). BOI also grants additional tax-based incentives if projects are in certain provinces or industrial areas, as part of its efforts to promote decentralisation and industrial development.

Table 10.3. Investment incentives offered for green sectors in Thailand

Sectors	Types of activities	Tax-based incentives		Non-tax incentives
		Exemption on Corporate Income Tax	Exemption of import duties	
Alternative energy	Waste-to-energy projects	8 years; No cap on CIT exemption for WTE projects	Yes, on new machinery and equipment used	• 100% foreign ownership allowed • Permission to own land granted • Permits can be granted to bring skilled workers into the country • Expatriation of foreign currency abroad allowed
	Renewable energy projects (e.g. solar, wind, biomass, biogas)	A period of 8 years; subject to a cap of 100% of the investment, excluding cost of land and working capital	Yes, on new machinery and equipment used	
Bio-plastics	Manufacture of eco-friendly polymers	A period of 8 years; subject to a cap, excluding cost of land and working capital	Yes, on new machinery and equipment used	• 100% foreign ownership allowed • Permission to own land granted • Permits can be granted to bring skilled workers into the country • Expatriation of foreign currency abroad allowed
	Manufacture of products based on eco-friendly polymers	A period of 5 years; subject to a cap, excluding cost of land and working capital	Yes, on new machinery and equipment used	
	Manufacture of paper containers coated with bio-plastics	A period of 3 years; subject to a cap, excluding cost of land and working capital	Yes, on new machinery and equipment used	

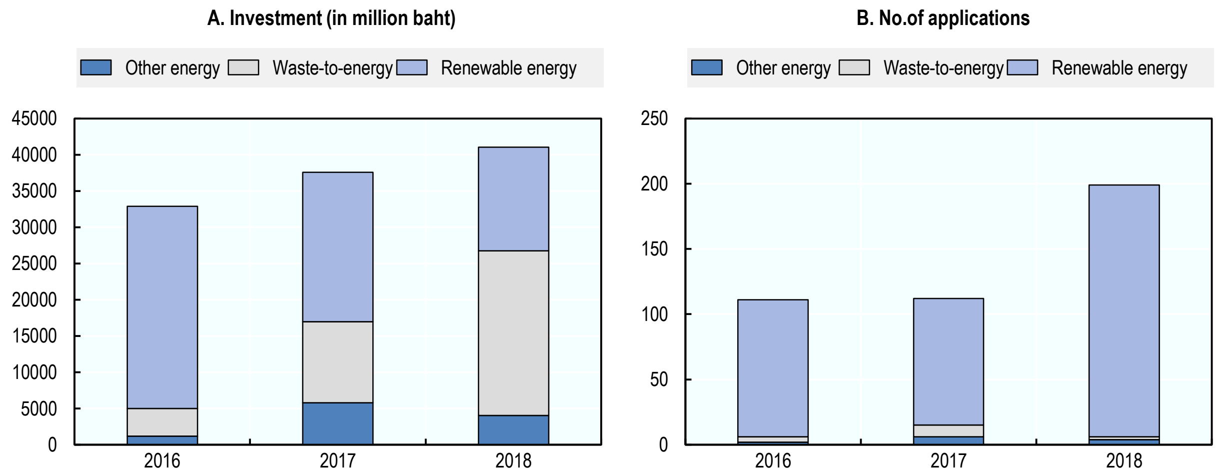
Note: Additional 'merit-based' incentives are applicable if the project is based in certain areas, such as additional years of CIT exemption.
Source: (BOI, 2019; Bamrungsuntorn, 2019; Norton Rose Fulbright, 2019)

BOI also provides investment incentives to green existing businesses and activities. For example, projects or businesses can get an exemption on import taxes for machinery as well as a three-year corporate income tax holiday if they invest in upgrades to reduce energy consumption, use renewable energy or reduce other environmental impact such as waste or wastewater (BOI, 2019; Bamrungsuntorn, 2019). Another incentive to green business behaviour is a relatively new decision to offer tax deductions in a bid to reduce plastic pollution (Rödl & Partner, 2019). Businesses will be allowed to claim corporate income tax deductions on expenses towards biodegradable plastics between 2019 and 2021.

Investment incentives are also offered to ‘non-green’ activities in targeted sectors, which raises questions about their overall effectiveness in reducing environmental impact. For example, similar – albeit lower – incentives are offered to non-renewable energy related projects, including to clean coal. For plastics, the manufacturing of bio-plastics receive the most favourable incentives, however, similar incentives are also available for non-biodegradable plastics and products[3].

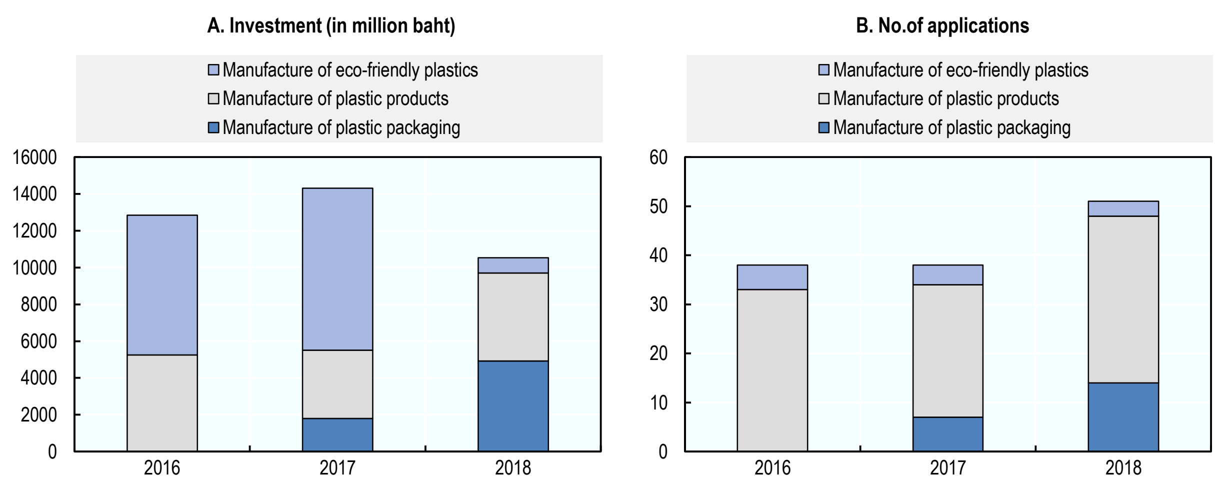
Investment incentives are key for investors in green businesses, similar to investors in other sectors. As discussed in Chapter 5, investment incentives in Thailand have played some role in encouraging foreign businesses to invest or maintain their investment in Thailand. The 2015-21 investment promotion strategy (alongside other policies) has helped to spur investment in both renewable energy and bioplastics (Figure 10.3 and 10.4), with many investments in waste-to-energy[4] and renewable energy applying to BOI since the strategy came into place. However, in the same timeframe, investments in ‘non-green’ energy and plastics have also been made. In the latter case, application for investments in non-biodegradable plastics is much higher than those in eco-friendly plastic manufacturing. Rethinking the promotion of non-green sectors alongside green sectors, and a greater alignment of environmental objectives across future investment promotion will be important. A greater use of cost-based incentives for green sectors could also be considered (see Chapter 5).

Figure 10.3. Applications for investment incentives submitted to BOI for energy-related investments-green activities, energy sector, 2016 to 2018



Source: BOI Statistics

Figure 10.4. Applications for investment incentives submitted to BOI for green and non-green activities, plastic manufacturing, 2016 to 2018



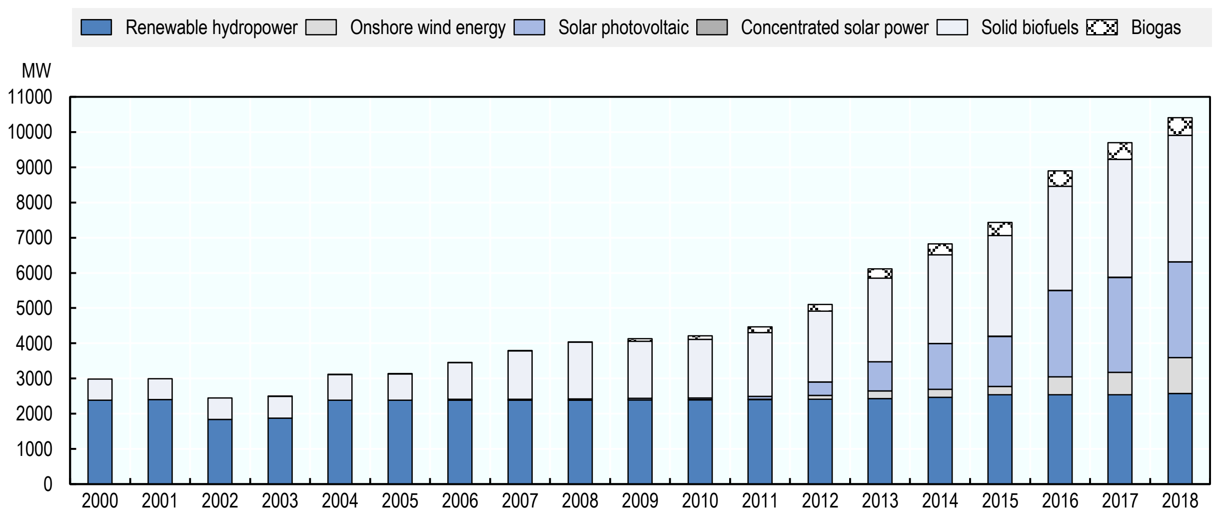
Note: Manufacturing of eco-friendly plastics includes: manufacture of eco-friendly polymers, products based on eco-friendly polymers and paper containers coated with bio-plastics. Manufacture of plastic packaging includes plastic packaging with special properties and manufacture of plastic products includes products for industrial goods.
Source: BOI Statistics

Promoting investment in clean energy

Thailand's promotion of renewable energy is a regional success story

Thailand has made major achievements in promoting renewable energy in the last decade (Figure 10.5), and has the highest penetration of renewable energy, from solar, wind and other sources, in Southeast Asia (IEA, 2018). In 2017, biomass and waste, solar and wind made up 8%, 7% and 2% of electricity generating capacity, respectively (BNEF, 2019). In terms of actual generation, renewables made up 8.7% in 2018 (EPPO, 2020). Among other factors, strong signalling from the government, coupled with financing support mechanisms through Feed-in-Tariffs and targeted investment incentives have contributed to Thailand's success in scaling up renewables.

Figure 10.5. Renewable energy generation in Thailand, installed capacity (MW), 2000 to 2018



Source: IRENA Renewable Energy Statistics 2019

The signal for investors of Thailand's ambitions on energy efficiency and renewable energy comes from the Thailand Integrated Energy Blueprint 2015-2036 (IRENA, 2017). A result of the government's efforts to harmonise energy policies, the blueprint ties together five major energy sector plans including the Power Development, the Energy Efficiency Plan, the Alternative Energy Development Plan (AEDP), the Oil Plan, and the Gas Plan. The plans include targets on energy efficiency (to reduce energy intensity by 30% by 2036 from 2010 levels) and on renewable energy. In the 2015 AEDP Thailand committed to increasing the share of renewable energy to 30% of energy consumption by 2036, and increasing the share of renewables-based power to 36% in generation capacity and to 20% in generation by 2037. A revised version of the AEDP, circulated in 2019, has increased the ambition of the renewable energy target, aiming to increase renewables to 33% of power generation by 2037 (Sangiem, 2019).

In addition to investment incentives for renewable energy provided by the BOI, Thailand has implemented various subsidy schemes to kick-start the renewable energy market. An 'adder' scheme was introduced in 2007 which provided power producers with a supplemental premium over the base cost of electricity they would receive (Norton Rose Fulbright, 2019). In 2014, the scheme was replaced with a Feed-in-Tariff (FiT) scheme, and in 2017-18 the government introduced competitive bidding for projects (IRENA, 2017). The system was run as a reverse auction where project proponents compete based on pricing, with the FiT set as the ceiling price. The FiT covers several sources including community ground- mounted and rooftop solar, waste-to-energy plants, biomass, biogas and wind. While utility scale solar was supported in previous years, with reducing technology prices for solar energy across Asia and the success of previous solar support schemes, the government has now withdrawn tariff support for this (BNEF, 2019). Rooftop and community solar projects, however, are still supported. In addition, the government has introduced a net-metering scheme in 2019 for residential solar applications.

Overall energy planning needs to carefully consider dependence on fossil fuels

Alongside increasing ambition on renewable energy, Thailand's Power Development Plan (PDP) also includes a small, but substantial share of coal-fired power in the country's energy mix. The PDP 2015 forecasts an increasing share of coal into the future, since then concerns have been raised about energy security due to the resulting dependence on coal imports, and there has been significant local opposition during the planning stages of the new coal power plants included in the plan. As a result, the recently revised PDP 2018 was published in mid-2019, with lower estimates for coal-fired power. Coal is now forecasted to make up 12% of Thailand's power generation capacity in 2037.[5] While reducing coal dependence is a welcome step, PDP 2018 continues to forecast that most of Thailand's electricity demand will be met by natural gas. The role of natural gas as a 'transition fuel' across emerging Asia is well understood and accepted but, considering the urgency of meeting the goals of the Paris Agreement, locking-in two decades of fossil fuel-based power poses a risk.

Financing for green growth

Financial policies and instruments are key to promoting green investment as they can help increase access to finance, mitigate the risks associated with new green technologies and demonstrate their viability, and reduce the cost of capital associated with green investments to increase their viability (Corfee-Morlot et al., 2012). Policies to promote green finance must include measures to 'green' the national financial system by encouraging financial institutions to consider environment, social and governance (ESG) issues and to track and report on climate risks in their portfolios (OECD/UNEP/World Bank, 2018).Enabling the development of green finance instruments – e.g. green bonds – is also important to enable a flow of financing for green projects. In this regard, using public finance – whether from the government or other development actors – is critical to mobilise private investment from foreign and domestic sources (OECD 2018b).

Thailand can build on success in promoting good corporate governance to develop a roadmap for green finance

Thailand has taken several steps to promote responsible business conduct and sustainability in the financial sector, as described in Chapter 9, with all the major regulatory actors – Securities Exchange Commission (SEC), the Stock Exchange of Thailand (SET), and several major banks and investors – having related initiatives in place. The focus so far has been on good corporate governance, and the SEC's Corporate Governance Code 2017 and Investment Governance Code 2017 both encourage responsible business and sustainable investment practices. The uptake of these has been good, with an estimated 99% of listed companies reporting, to some extent, on sustainability as part of annual report disclosure requirements, and around 88 companies referring to SDGs in their reporting (Suwanmongkol, 2019). As a result of these efforts, Thai companies are recognised for sustainability performance, with 20 companies listed on the Dow Jones Sustainability Index in 2019, and several recognised as industry leaders.[6]

Building on this success, Thailand has invested and should continue putting effort in building a cohesive framework through its sustainable finance task force and working group bringing together the financial sector, the insurance sector and listed companies, to encourage more targeted performance on green finance and the SDGs. In addition to recognising the importance of ESG in annual reports and voluntary reporting, ESG criteria should be integrated into board terms of reference, into the assessment of clients and transactions, and into portfolio level risk assessment. Currently, these processes are at an early stage in Thai commercial banks (Chen Ted, Stampe and Tan, 2019). A positive step in this area is the SEC's roadmap on sustainable capital markets, established at the end of 2019 (Box 10.1), and their plans to include information on carbon emissions as part of disclosure for listed companies, which in turn will be supported through capacity building conducted in collaboration with the Thailand Greenhouse Gas Organisation.

Similarly, Thailand must continue to take active steps to promote green bonds in the region. Building on the ASEAN Green Bond Framework, Indonesia and Malaysia have developed their own green finance standards and guidelines, which have resulted in increasing issuances of green bonds and green Islamic finance (i.e. through sukuks). ASEAN green bonds make up only a fraction of global issuance, but have been rising year on year, with Indonesia responsible for 39% of ASEAN issuances (Frandon-Martinez and Filkova, 2019).

Box 10.1. Roadmap on creating sustainable capital markets in Thailand

The Securities and Exchange Commission (SEC) has been working to shift the focus of capital markets development beyond corporate governance to broader sustainability. In 2019, the SEC introduced a roadmap for enhancing the sustainability of Thailand's capital markets in their strategic plan for 2020-2022. The roadmap includes activities targeting the key stakeholders in Thailand's capital markets, and includes the following priorities:

- For issuers, SEC is revising disclosure requirements for listed companies and companies seeking to go public. From 31st December 2021, companies will need to submit a new 'One report' combining an Annual Registration Statement and annual report. The 'One report' will include information on human rights policy and practices, carbon emissions and provident funds.
- For investors, efforts will be made to continue to promote the implementation of the Investment Governance Code (I code) by issuing self-assessment forms and guidelines for asset managers, and by supporting listed companies to use ESG-criteria when choosing fund managers.
- For reviewers, international collaboration will be sought to develop capacity of local reviewer entities.
- On financial products, guidelines will be issued to encourage green Real Estate Investment Trusts and infrastructure funds to encourage investments in assets, beyond renewable energy, to span more broadly across infrastructure sectors including real estate.

In addition to the areas above, the roadmap includes activities to build the information system on sustainable finance instruments, to increase cooperation among the main finance-related government agencies and the private sector, and to promote international cooperation.

Source: SEC

Although green bond issuances are at an early stage in Thailand, these have grown rapidly in the last two years, with USD 1.25 billion in green, sustainability and social bonds issued in 2019, according to SEC. The government has recently launched its first sustainability bond, also the first of its kind in ASEAN, with a volume of USD 1 billion dedicated to the Mass transit project and COVID-19 relief package. There were also bond issuances of USD 400 million from a state-owned enterprise, of which USD 188 million are green bonds from the Bank for Agriculture Cooperatives and USD 212 million are social bonds from the National Housing Authority. The green bond market has a huge potential to grow as Thailand has a number of potential renewable energy projects (e.g. wind, and solar) in the pipeline that qualify for green bonds.

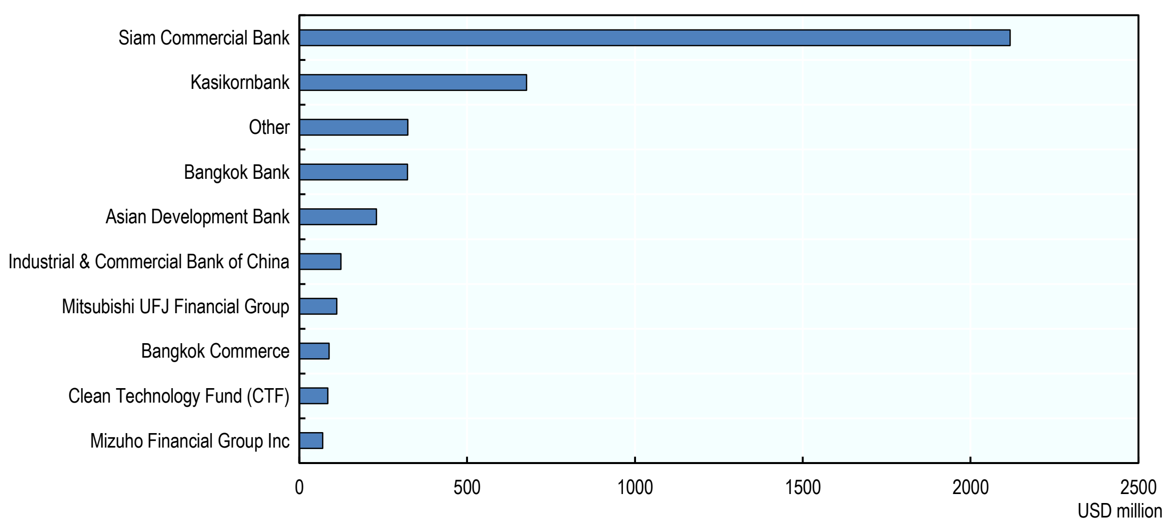
This momentum has in part been due to the SEC's efforts to promote green bonds by issuing guidelines on green, social and sustainability bonds in 2018 and 2019 which allow issuers to use any internationally accepted green, social or sustainability bond standards. SEC has also supported 'bootcamps' with potential issuers, underwriters and investors. Efforts have also been made to offset the additional monitoring and verification costs associated with issuing green bonds. For example, SEC has introduced waivers for approval and filing fees until mid-2021, and the Thai Bond Market Association has reduced bond registration fees.

Scaling up Thailand's sustainable finance industry will require clear and transparent policies, especially definitions of what could be considered 'green' or not, building on existing international standards that are already being used by issuers and investors. Lessons can be learned from the EU Action Plan on Sustainable Finance and China's efforts to build a national green finance system, both of which set out clear classification systems on green finance. Considering the nascent stage of Thailand's green finance industry, a phased approach to identifying and developing such a classification system may help encourage issuances in the short term. For example, an initial step can be to demarcate sub-sectors that would automatically qualify as green and others where more additional criteria could qualify. At an advanced stage, a threshold-based system, like the one proposed in the EU Taxonomy on Sustainable Finance, could be considered at a sub-sector level.

Public finance has helped to spur green investment through blended finance solutions

Public finance plays an important role in spurring green investment in Thailand. Two on-budget funds, the ENCON fund and the ESCO fund, have been important precursors to action on energy conservation and efficiency, and have also helped Thai banks to develop green lending. The Energy Efficiency Revolving Fund, under the ENCON fund, provided credit lines to 11 commercial banks between 2003 and 2012 to enable on-lending to clients to support energy efficiency projects (Grüning et al., 2012; Wang et al., 2013). Initially, the fund was able to leverage funds from banks at a ratio of 1:1, but by 2012 this increased to 1:3 as banks became more familiar with energy efficiency lending.

Figure 10.6. Lead debt providers for wind and solar projects, 2008-2017



Source: BNEF, 2019

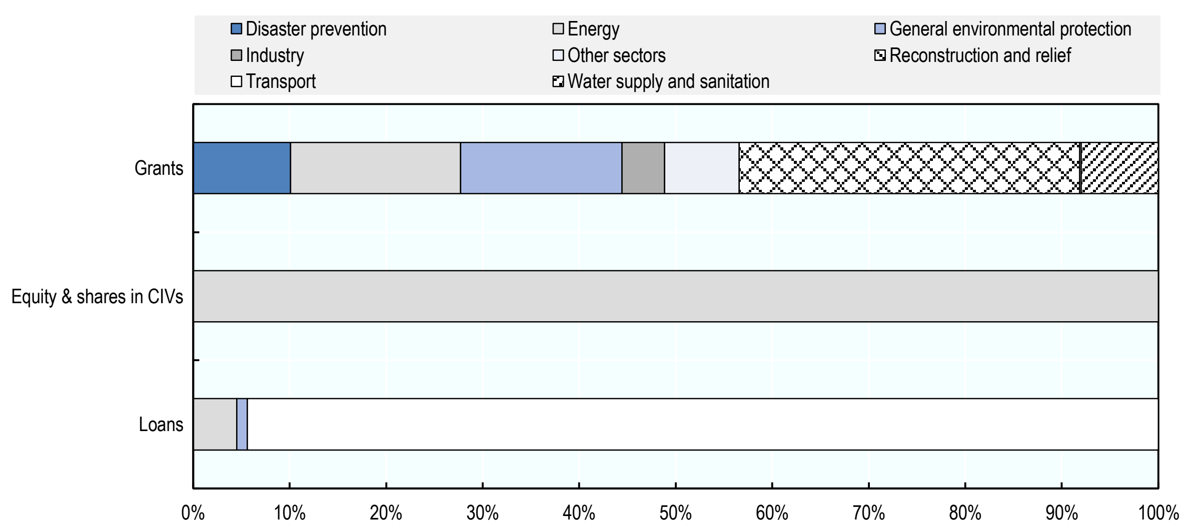
Similarly, the initial deployment and scale up of solar and wind energy in Thailand was driven by investment and support from the public sector. In addition to investment incentives and tariff support mechanisms, the availability of development finance to support commercial project developers with long term financing helped to kick-start the market. An analysis of the Clean Technology Fund's role in the Thai solar and wind markets showed that a relatively small volume of concessional climate finance was able to address bottlenecks (BNEF, 2019). An estimated USD 5 billion was invested in solar and USD 3 billion between 2008 and 2017 in Thailand, with the lion's share of investment coming from project developers and commercial banks. Despite a modest share of overall investment[7] (Figure 10.6), financing from CTF and multilateral development banks enabled commercial banks to offer longer tenor loans. This was important because, at the time commercial banks were wary of lending beyond the timespan of the government's subsidy programme (which ran for 10 years). By blending concessional CTF financing with MDB and commercial banks finance enabled the latter to finance and improve the debt-to-equity ratios of the projects. MDB financing was also able to support newer and smaller developers who did not have an existing track record with commercial banks (BNEF, 2019).

Domestic and international public climate finance supports policy and capacity gaps

Targeted public climate finance is an important source of funding for climate action. Climate finance – whether domestic or international – supports the enabling environment (i.e. policies and institutions), directly finances climate projects and mobilises other sources of financing. Government budgets are the largest source of financing for development more broadly in Thailand, including for climate change. Between 2009 and 2011, approximately 2.7% of the government budget was spent on climate change related projects (UNDP/ODI, 2012). The government has been strengthening management of climate-related budget expenditure, by developing and piloting the use of climate change budgeting analysis (CCBA) (UNDP, 2017).The analysis, once institutionalised, will help the government to better identify spending on climate change and its impact.

International public climate finance plays a smaller role in Thailand than in other countries in the region, with many donors transitioning to providing technical assistance and policy support after the reclassification of Thailand's status as an upper-middle income country (UNDP, 2017). According to OECD Development Assistance Committee statistics, between 2012 and 2017, USD 2.3 billion in climate-related development finance was committed towards projects in Thailand. Most of this financing (USD 1.9 billion) was in the form of loans from the Japanese International Cooperation Agency towards the expansion of Bangkok's metro rail system. Within the same period, approximately USD 217 million in grants were committed towards technical assistance and support for post-disaster relief and rehabilitation (Figure 10.7). Some examples of this include Germany's support towards climate policy development and implementation, through the German International Climate Initiative, and support from Australia to develop Thailand's national greenhouse gas inventory.

Figure 10.7. Climate-related development finance to Thailand, 2012 to 2017, by instrument and sector



Source: OECD DAC Statistics

The volume of climate-related development finance that Thailand will be able to access is likely to remain limited, although the use of these funds can be maximised to support specific policy reforms and institutional capacity building. These can also help to make the case for government spending on green investment, both directly and through specialised vehicles to promote greater private financing for green growth.

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Notes

[1] See https://edition.cnn.com/2019/01/30/health/thailand-air-pollution-intl/index.html.

[2] http://www.greenfiscalpolicy.org/countries/thailand-country-profile/

[3] Manufacturing of plastic products for consumer goods and manufacturing of specialty plastic packaging are classified as A2 and A3, with similar conditions as for bioplastics, however manufacturing of plastic products for consumer goods must be located in SEZs to avail of the incentives.

[4] It should be noted that waste-to-energy plants are exempted from submitting EIAs except in certain cases (e.g. watershed areas, protected and conservation areas, Ramsar sites and high air pollution areas).

[5] See https://af.reuters.com/article/commoditiesNews/idAFL3N22C2O8

[6] See analysis by The Nation here https://www.nationthailand.com/business/30376291

[7] CTF and multilateral development banks (MDBs) provided an estimated at USD 141 million for solar and USD 94 million for wind projects over the same period.

11 Promoting Thai outward investments

Outward foreign direct investment (OFDI) from Thailand has increased rapidly in recent years. This chapter presents recent trends, drivers and impacts of Thai investments abroad. It analyses how OFDI can contribute to Thailand's economic growth, competitiveness and access to technology. The chapter also examines Thailand's OFDI policies and presents policy directions on further facilitating and promoting OFDI.

Summary

Outward investment has become an important pillar of Thailand's economy. Thailand's investments abroad have increased rapidly over the past decade and outward flows have surpassed inward flows in recent years. Thailand has become the second largest outward investor in terms of OFDI stock in ASEAN, surpassing that of Malaysia in 2018. The country's outward investment is increasingly important in the economy with OFDI stocks as a share of GDP reaching 25% in 2018. Thai enterprises are venturing into neighbouring ASEAN markets and increasingly beyond regional markets. Slower domestic market growth, rising labour costs and export market access are major factors driving Thai OFDI.

OFDI can increase Thailand's competitiveness and is central for long-term growth, GVC integration and sustainable development. Positive impacts are often less evident as compared to those of inward investments. Inward investments are part of Thailand's productive capital and directly contribute to domestic value added. OFDI could imply less investment and economic activity at home, but there is mounting evidence of a greater positive impact of OFDI in Thailand's economy. Outward investments allow firms to grow by tapping into new and potentially larger markets abroad. Outward investors can improve competitiveness by shifting operations to neighbouring countries that are no longer competitive at home, for example due to rising labour costs. Investors can also access technology and knowledge that may not be available in home markets and thereby contribute to the development of activities and industries targeted under Thailand 4.0. These positive effects benefit OFDI firms themselves, but benefits can also spill over into to the home economy more broadly.

Governments can support FDI outflows both through dedicated OFDI support measures (e.g. loans and grants for outward investors, investment insurance as well as technical and information services) and, more implicitly, through wider policies that support the economy's internationalisation (such as capital flow liberalisation, investment protection, and trade policy). Dedicated OFDI policies can reduce the costs and risks associated with investment projects, making venturing overseas more attractive. Policy prioritisation depends on the intended policy objective of OFDI promotion, as is the case for inward FDI.

The emerging global economic crisis related to the COVID-19 pandemic is expected to interrupt domestic growth (Chapter 2). As inward FDI flows drop (Chapter 4), a similar reduction is expected for Thai OFDI. Negative demand shocks in host markets and increased uncertainty in host markets are likely to push Thai investors to postpone investment plans. Lower expected profits are likely to lead some Thai investors to revise overseas investment projects and investment locations. In the recovery from the crisis, Thai firms may begin to resume investment projects abroad. Economic recovery at different paces may produce investment opportunities abroad, while also providing an opportunity for risk diversification.

Policy considerations

Public policies can play an important role in influencing firms' decisions to invest abroad by reducing the costs and risks associated with investment projects. In Thailand, several public institutions[1] are involved in OFDI related policies and OFDI is a strategic priority in Thailand's National Economic and Social Development Plan 2017-21. While Thailand's current institutional and policy setup is likely to enable further OFDI growth, a number of policy considerations can be made that would enable a strong and targeted OFDI policy framework better supporting Thailand's development ambitions:

- *Strengthen the OFDI policy framework through inter-agency coordination.* Thailand has a comprehensive policy package on OFDI ranging from (1) continuing capital account liberalisation, (2) good coverage of investment treaty and double taxation agreements, (3) the availability of financial and insurance instruments to protect and incentivise investments, to (4) the provision of informational services and technical assistance for smaller firms intending to venture into foreign markets. OFDI's concrete contribution to strategic policy objectives under the 2017-21 plan and Thailand 4.0 is still not well defined and, in some cases, agencies have overlapping roles. An inter-agency committee, chaired by one or several state agencies, could be mandated to formulate strategic OFDI objectives, clarify roles and align reform priorities across government bodies. A clear and coordinated policy message is increasingly important in light of COVID-19 uncertainties.

- *Conduct a comparative review of governance of OFDI policies in other relevant outward investing countries*, such as Japan and Korea. The directions below could be included in the discussion on OFDI policy priorities and strategic orientations.
- *Clarify policy approaches for two distinct sets of OFDI priorities in support of Thailand 4.0 ambitions.* Thailand 4.0 aims to (1) enhance productivity and competitiveness of selected high-tech industries and (2) boost technological and innovation capacity, including in new industries (Chapter 2). On the one hand, OFDI can support the relocation of labour-intensive, lower skill production stages to lower cost neighbouring countries (particularly CLMV). This liberates resources for higher value activities at home and enhances overall competitiveness of the investing firm. This type of OFDI has increased importantly in recent years. On the other hand, OFDI has a potential role in acquiring brands, knowledge as well as new technologies and innovation capacity. Thai acquisitions of high-value assets abroad are not yet picking up. It is important to distinguish the two sets of OFDI priorities and then engage in the discussion and formulation on respective – and potentially varying – investment promotion activities.
- *Increase resources dedicated for OFDI information services and technical advice* and align efforts across government and private actors. The assessment shows that Thai firms are sometimes not aware of public and private services to provide assistance on OFDI projects. The BOI reports that their efforts remain limited due to resource constraints, including with respect to staff, and their role vis-à-vis other agencies such as the Department of International Trade Promotion is not fully clear. OFDI information services and technical advice are revealed to be essential in Thailand's efforts to enhance OFDI and competitiveness. Providing up-to-date OFDI information will be particularly important as COVID-19 recovery policies are put in place to stimulate new investments. The government could reconsider resource allocation with respect to these services while aligning efforts across government and private actors.
- *Augment OFDI technical advice with services related to RBC supply chain due diligence.* Under the OECD *Due Diligence Guidance for Responsible Business Conduct,* enterprises are subject to the same expectations in respect to RBC when operating in their home country or overseas (see Chapter 9). Capacity building on RBC supply chain due diligence could be introduced as an add-on training for enterprises benefiting from information services.
- *Design and implement a policy package dedicated to promoting OFDI in high-value assets, potentially including financial instruments.* Thai firms are currently not investing much in foreign assets that could support their transition towards higher value added activities and facilitate the development of their domestic capabilities. Few firms are acquiring assets in technology, R&D or high value brands. Thailand's 2017-21 plan recognises the need to boost OFDI in such assets but does not clarify what policy instruments are dedicated to it. Various state institutions provide financial incentives (such as loans) and investment risk insurance. These incentives (and potentially even OFDI tax incentives which are currently not available in Thailand) could play an important role in promoting investments into high-value and high-risk assets. The government could use available policy instruments to develop a package of targeted support mechanisms and incentives dedicated specifically to OFDI in high-value assets. A pre-requisite for the success of such a policy package would be an assessment of the experience of peer and more developed OFDI investors, including in the OECD.

Investment from Thailand is rapidly expanding

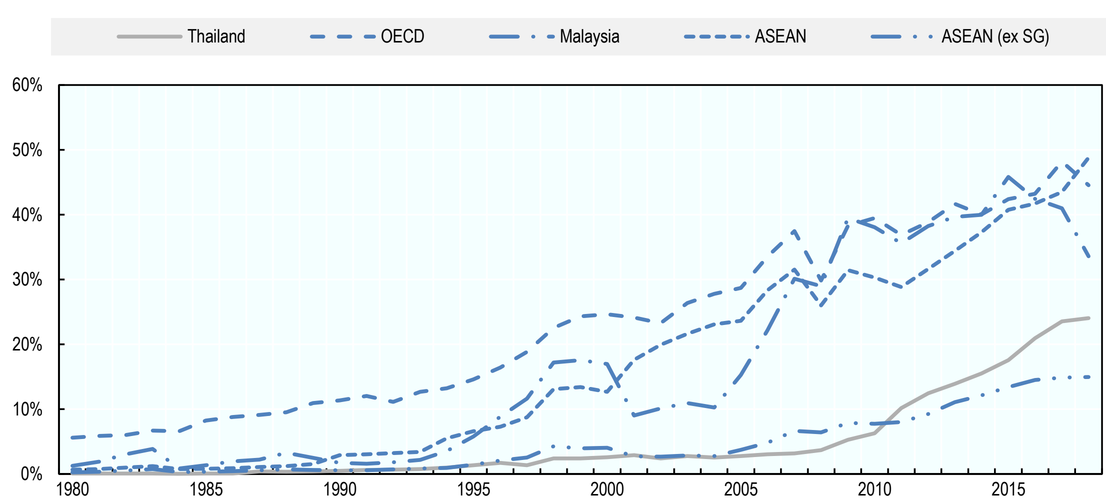
Thailand is becoming an important international investor. Thai OFDI has grown sharply since 2010, with a twelve-fold increase of the OFDI stock over 2008-18. Thailand's OFDI stock surpassed USD 100 billion in 2017, making it the 14th largest among developing economies. Thai companies first began to venture overseas during the 1990s and, after a slowdown following the Asian Financial Crisis in 1997, Thai investment outflows have increased continuously since 2005. Outflows reached USD 11 billion in 2013, partly driven by the liberalisation of capital outflows in the late 2010s. FDI outflows and inflows dropped dramatically over 2013-15 as Thailand experienced low economic growth and political instability (Chapter 2), although outflows have since recovered and grown steadily. The growing importance of OFDI relative to inward FDI indicates that Thailand is consolidating its role as a regional outward investor. The ratio of outward to inward FDI stocks increased from 15% to 54% over 2010-18, with FDI outflows surpassing inflows by 70% in 2018.[2]

After rapid expansion in recent years, Thai OFDI is also expected to fall in 2020 in in light of the emerging global economic crisis related to the COVID-19 pandemic. Worldwide FDI flows are expected to drop by more than 30% in 2020 even under the most optimistic scenario (OECD, 2020). Bank of Thailand preliminary 2020 OFDI figures do not yet point to such a drop. Thai OFDI flows in January and February were similar to those in the previous years.

Thailand is the second largest outward investor in ASEAN in absolute terms and the third largest outward investor relative to GDP. Thai OFDI flows surpassed Malaysian outflows in 2016 and outward stocks in 2018. It is now the second largest outward investor in Southeast Asia, behind Singapore. Thailand's OFDI stock relative to GDP grew from around 5% to almost 25% over 2008-18, surpassing the ASEAN average (excluding Singapore), but lower than that of Singapore (260%) and Malaysia (40%) and only half that of OECD countries (Figure 11.1).

Figure 11.1. Growing outward investments in Thailand and ASEAN

Outward FDI stock (% of GDP)



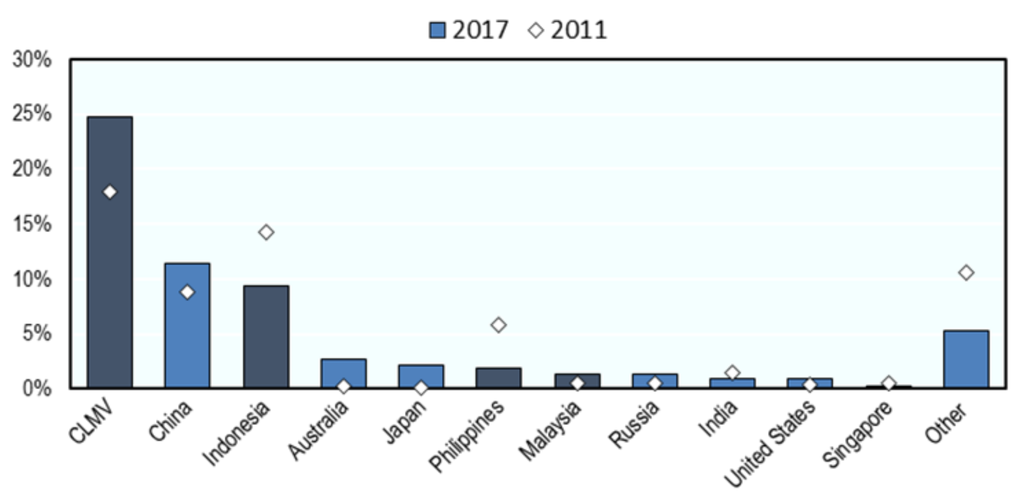
Note: SG = Singapore. ASEAN does not include Myanmar, due to unavailability of data.
Source: OECD based on UNCTAD and World Bank.

Thai greenfield investments go increasingly to the CLMV region

The bulk of Thailand's OFDI goes to a small number of countries. Over a third of Thai greenfield investments are located in ASEAN Member States (AMS),[3] particularly in CLMV countries (Figure 11.2). Indonesia and the Philippines also receive greenfield investments, but their relative share has fallen in recent years while that of CLMV has risen. Thai greenfield projects in CLMV countries are on average smaller than greenfield projects in other countries in the region. Thai investors shift lower value added activities, which are no longer competitive at home, to neighbouring CLMV countries, and Thailand has become one of the top foreign investors in CLMV. It was the 3rd and 4th largest investor in Lao PDR and Myanmar in 2018. Geographic proximity and close cultural affinity are among the main motivations reported by Thai manufacturing firms that are setting up production plants in CLMV (OECD-UNIDO, 2019). Linguistic affinity (particularly with Lao PDR) also facilitates communication between staff, which is important for the transfer of skills and know-how. Beyond ASEAN, over 90% of greenfield investment occurs within Asia, particularly in China, Australia and Japan.

Figure 11.2. Thai greenfield investments are concentrated in ASEAN

Thai outward greenfield investment (% of total)



Note: 2011 = accumulated value of projects 2003-2011, 2017 = accumulated value of projects 2003-2017.
Source: Based on OECD-UNIDO (2019) and Financial Times FDI Markets database.

Compared to greenfield investments, Thai cross-border M&A activity is less concentrated in CLMV (Figure 11.3). Singapore's share as a destination of total M&A activity within ASEAN has increased rapidly since 2011, along with Viet Nam. These shifts were driven by a few large acquisitions in both countries. In the 2000s, Thai investors acquired shares predominately in Indonesia, the Philippines and Malaysia, while the scale of new M&A deals was small in these destinations in recent years.

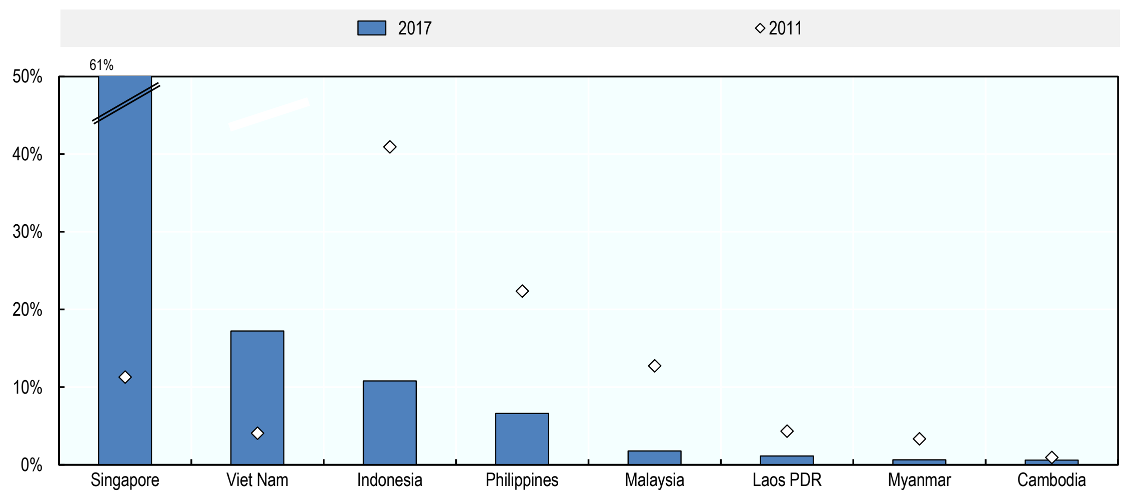
Thai OFDI is diversified across sectors

The sectoral composition of Thai OFDI differs by type of investments (greenfield FDI vs. cross-border M&A). Greenfield projects occur predominately in infrastructure and manufacturing. The composition of M&A deals ranges from manufacturing (mainly food and beverage) and mining to services (particularly finance) (Figure 11.4).

Thai companies are involved in Southeast Asia's largest energy infrastructure projects, particularly in CLMV (Chapter 10). Thailand's largest electricity producer announced its plans to build gas-powered plants and hydroelectric plants in Myanmar, and Thai investors in renewable energy are also expanding abroad. A Thai based-company is developing the first wind power project in Lao PDR and the largest wind farm in ASEAN which is expected to significantly improve Lao PDR's electricity capacity and increase its potential for electricity exports to neighbouring Cambodia, Thailand and Viet Nam (IES, 2017). Thai outward investments in solar and wind power have also been expanding in recent years.

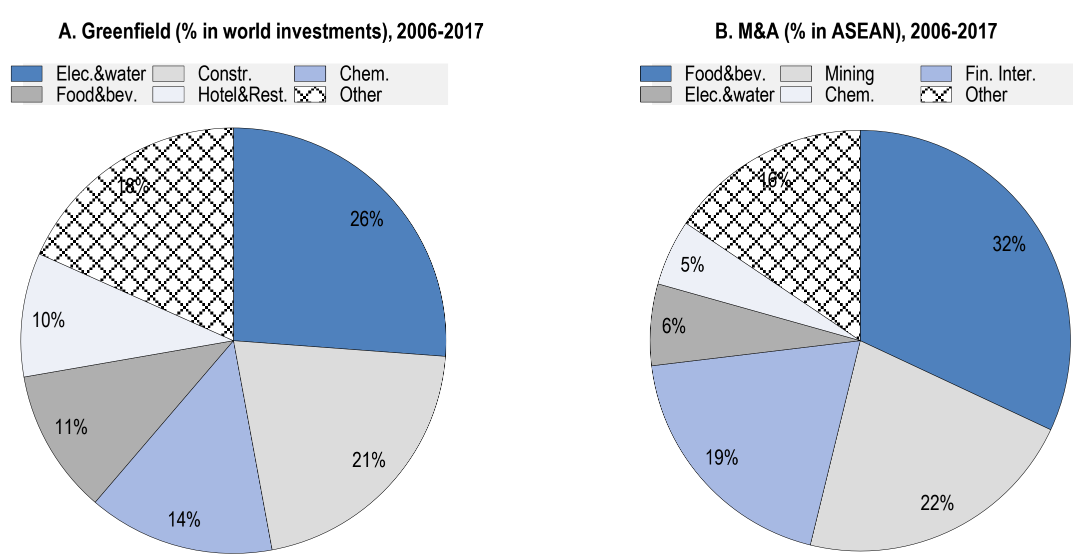
Figure 11.3. Almost two thirds of Thai M&As in AMS occur in Singapore

Thai outward M&A investment (% of ASEAN)



Note: 2011 = accumulated value of projects 2003-2011, 2017 = accumulated value of projects 2003-2017.
Source: OECD based on Dealogic.

Figure 11.4. Thai greenfield investments are concentrated in infrastructure projects, while the majority of M&A deals are in manufacturing, mining and finance



Note: Elec. & water = electricity and water; Food & Bev. = Food and Beverages; Constr. = Construction; Hotel & Rest. = Hotel and Restaurants; Chem. = Chemicals; Fin. Inter. = Financial Intermediation.
Source: OECD based on OECD-UNIDO (2019), Financial Times FDI Markets database, and Dealogic

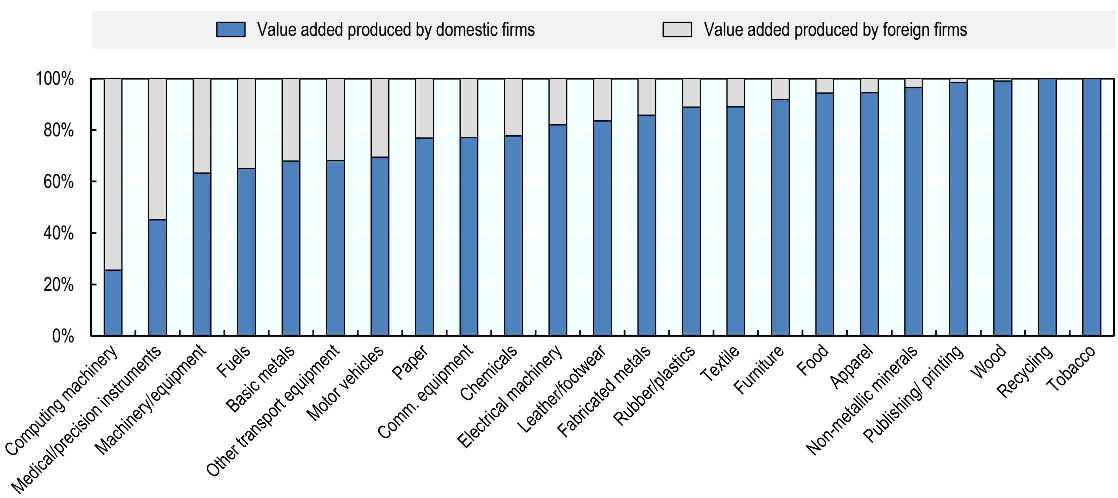
OFDI often occurs in manufacturing industries with strong domestic firms

Thai-owned food companies have been investing actively abroad; both in developed markets (such as the US and Europe) through the acquisition of already established brands, but also in neighbouring countries with investments into processing and packaging. In Thailand, the food and beverage industry is characterised by relatively low participation of foreign firms and in which major market players are Thai enterprises (Figure 11.5). The electronics and automobiles industries, on the other hand, have not seen much OFDI from Thailand. Compared to the food industry, electronics and automobiles account for the bulk of Thailand's inward FDI stock in manufacturing (Chapter 4). For example, in computing machinery, foreign firms produced almost 80% of total value added (Figure 11.5).

An important enabler of OFDI may thus be the presence of strong domestically-owned firms in Thailand, although this argument is challenged by recent trends of relocation of Thailand-based assembly activities in electronics and automobiles by foreign producers, particularly Japanese. These relocations are often considered as Thai OFDI because foreign firms invest into neighbouring CLMV from their regional headquarters in Thailand (see section below).

Figure 11.5. Foreign firms dominate in high-tech industries

Value added by ownership and industry (% total), 2016



Note: foreign firm is defined at those with 50% or more foreign ownership.
Source: OECD based on Thailand's Industrial Census.

OFDI involves benefits for economic and sustainable development

The public debate has traditionally focused on the consequences of inward FDI for economic and sustainable development. Recent literature suggests that foreign investment has economic effects not only in host but also sending countries. Such impacts on the investing countries are often less immediate than those on host countries. As a growing share of developing countries have become important outward investors, the question naturally arises what the long-term economic impacts in the home country are likely to be. OFDI means that capital and potentially other resources are relocated abroad and this could have a negative impact on the overall capital stock, balance of payments, employment, and trade (Sauvant et al., 2014). There is mounting evidence that OFDI can be leveraged to advance economic development at home by enabling firms to grow larger, become more competitive and access new technologies.

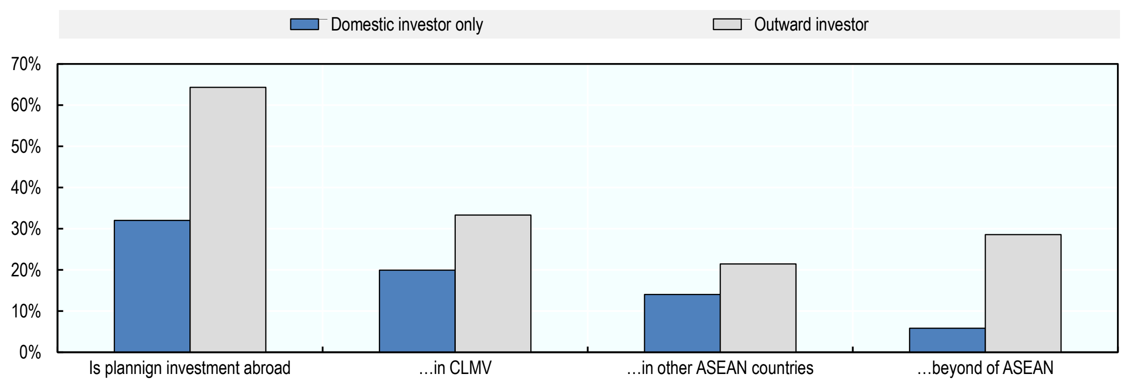
Thai investors planned to expand investments abroad

A 2019 enterprise survey of Thailand indicates that OFDI activity of Thai-based firms is likely to expand in the coming years. Two thirds of the surveyed Thai outward investors (manufacturing and services) planned to expand their investments overseas. Moreover, about one third of Thai companies that are not yet investing abroad reported plans to do so within the next three years (Figure 11.6).

ASEAN remained the most attractive destination for OFDI from Thailand. Many interviewed firms plan to invest within ASEAN. Investments in CLMV will continue to grow, driven by large projects in agriculture, infrastructure and manufacturing. About 30% of the surveyed outward investors plan to invest outside the ASEAN region.

Figure 11.6. A third of Thai companies report plans to invest abroad within 3 years

Does your firm expect to expand operations through new investments abroad in the next 3 years? (Multiple answer)



Note: Figures based on responses of 298 Thai manufacturing and service firms, 42 outward investors and 256 of domestic investors (without investments abroad).
Source: Based on OECD-UNIDO (2019).

The emerging global economic crisis related to the COVID-19 pandemic is expected to lead international investors worldwide to postpone part of planned investments overseas. Thai investors are likely to delay investment in light of increased uncertainty in the short-run. The economic crisis related to COVID-19 is expected to affect Thai OFDI in different sectors to different degrees. OFDI may offer risk diversification and increased resilience to Thai businesses with high exposure, such as the tourism sector (Polkuamdee, 2020).

OFDI allows firms to grow, be more competitive and access technologies

Evidence of home country effects in both developed and developing countries is still relatively scarce (Lim and Teo, 2019; Paul and Benito, 2018). OFDI is a means for investors to access markets, capital, technology, and knowledge abroad. OFDI thus benefits the investor itself; particularly through three main channels (World Bank, 2018):

- *Scale effects*: outward investors grow larger by expanding into overseas markets. Venturing into new markets can also have a complementary effect of creating new export opportunities, both by creating new export channels or by increasing the demand for intermediate exports. By growing larger, outward investors enjoy additional gains based on economies of scale and scope, lowering costs of production and operation.

- *Competition effects*: competition with firms in foreign markets forces outward investors to become more efficient and upgrade production processes, which in turn can contribute to expanding exports and reinforce the scale effects of investor.
- *Knowledge effects*: by directly acquiring firms abroad (through M&As and joint ventures) or by developing partnerships, knowledge can be transferred back to the parent firm and generate reverse technology spillovers, which have positive effects on outward investors' productivity (Amann and Virmani, 2014; Knoerich, 2017). Knowledge effects of acquiring strategic assets may be higher among emerging country MNEs as these are further away from the technological frontier.

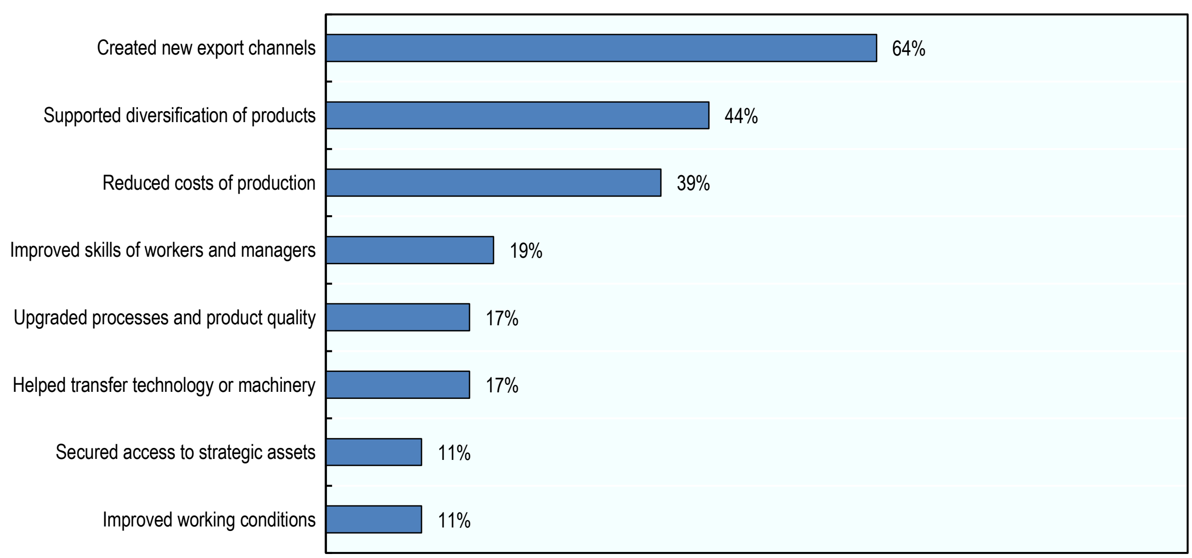
Thai companies report multiple benefits of outward investments

Thai firms engaging in outward investment benefit from OFDI through a number of diffusion channels. The majority of outward investors in a recent enterprise survey of Thailand report that OFDI provided access to new markets; a third of investors mentioned that OFDI helped to diversify products and reduce costs (Figure 11.7).

The survey further reveals that outward investors are on average 40% more productive than those that only import and export, and 11 times more productive than firms that are not internationalised at all (OECD-UNIDO, 2019). Thai outward investors are also larger and tend to form more long-term business relationships with firms outside Thailand.

Figure 11.7. Outward FDI supports product and market diversification

How has your firm benefited from its investment abroad (outside Thailand)? (Select all that apply)



Note: Figures based on 36 responses from Thai manufacturing and service firms with outward investments.
Source: Based on OECD-UNIDO (2019).

OFDI can benefit the Thai economy as a whole

A key policy question is whether OFDI benefits spill over to the rest of the economy. Broadly, OFDI can contribute to economic growth in Thailand. Multiple studies find that OFDI is associated with GDP growth and higher growth of incomes in Southeast Asia (Herzer, 2010; Bano and Tabbada, 2015; ESCAP, 2020). Recent research shows that the observed positive impact of OFDI spills over to the home economies through multiple channels, including employment creation, technology upgrading and trade.

OFDI often increases trade between the investing firms and their foreign affiliates (Thomsen, 2006). As firms that expand production overseas grow and gain competitiveness, they may also increase demand and sourcing of intermediates from firms operating in home countries.[4] That is, Thai firms investing abroad can create new export channels for themselves and their suppliers. For Thailand, Ahmad et al. (2016) finds that a 1% increase in OFDI is associated with an increase of 4% in exports.

OFDI can also generate knowledge spillovers on the outward investing firms when they enter other markets (Criscuolo, 2009). Knowledge spillovers could be higher when Thai firms venture into developed economies, although the extent of these positive effects can vary, depending on the motivation and other specificities of the investment project. More generally, OFDI is associated higher country R&D expenditure in ASEAN countries (ESCAP, 2020). For example, OFDI that relocates R&D activities away from the home market generally benefits the investing enterprise, but its broader benefits on the home economy are likely to be limited (Thomsen, 2006).

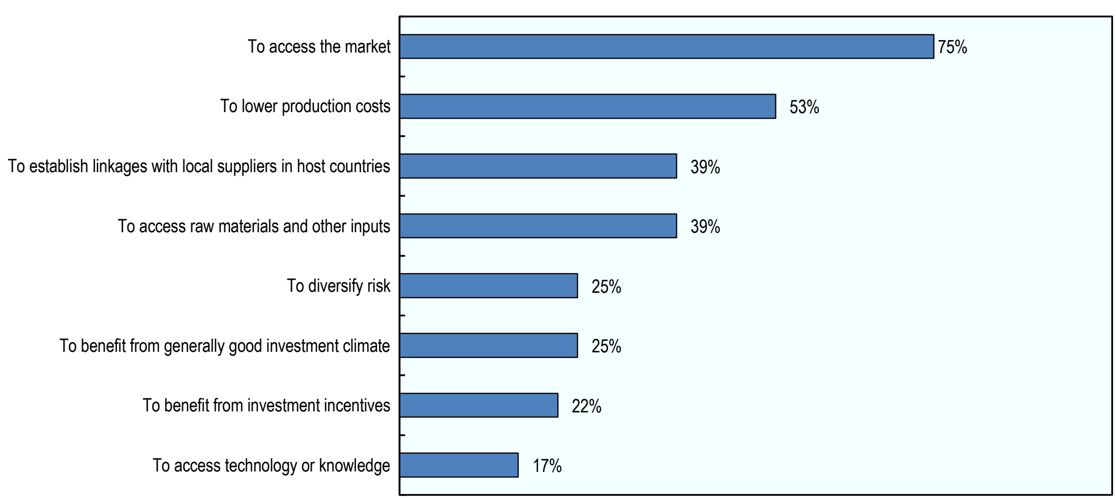
Structural shifts create opportunities for OFDI

Neighbouring markets are growing faster than at home

Thailand has been growing at a much slower pace in recent years compared to the economic boom of the pre-1997 crisis (Chapter 2). The domestic market has become increasingly saturated and sometimes provides fewer growth opportunities for firms. Faster growing markets in ASEAN (particularly CLMV) can provide new opportunities for Thai firms to expand, either through exports or OFDI. Neighbouring ASEAN economies have had growth for 2020 significantly revised downwards following the outbreak of the COVID-19 epidemic, but may continue to provide more moderate market growth opportunities. Three out of four of the surveyed outward investors reported market access as one of the main factors in their decision to invest abroad (Figure 11.8).

Figure 11.8. Thai firms invest abroad to access markets and improve efficiency

What were the most important factors for your firm to decide to invest outside of Thailand? (Select all that apply)



Note: Figures based on 36 responses from Thai manufacturing and service firms with outward investments.
Source: Based on OECD-UNIDO (2019).

Direct investments can give investors better market access than they might get through export channels, as well as facilitating access to distribution networks in the destination market (Buckley, et al., 2007). Thailand's diversified export markets within Southeast Asia can be expected to also facilitate the exporting firm's investment expansion in these markets since securing market access first through exports can lower the uncertainty and risks associated with OFDI (Banga, 2008).

Rising costs at home push Thai firms to internationalise

Economic development and an ageing society in Thailand have led to rising wages (Chapter 2). Increased labour costs make low skilled and low value added activities in manufacturing and services less competitive. These activities are increasingly relocated to neighbouring low-cost destination, again predominately in the CLMV region where abundant and young labour will keep labour costs relatively low in the coming decades (ADB, 2015). OFDI as a means of keeping costs down is an important driver for Thai investors (Figure 11.8).[5]

Shifting lower value added activities to foreign production locations affects labour demand at home and liberates labour and other resources for higher value added activities and can thus enable economic upgrading (Knoerich, 2017). Thailand's National Economic and Social Development Plan for 2017-2022 recognises the implications of rising domestic costs and the need to relocate less competitive activities abroad. This economic upgrading is of course subject to the development of relevant worker skills and other knowledge, which is a key priority of several Thai state agencies (Chapter 2 and 5).

Thailand's loss of trade preference with key partners pushes firms to relocate

Thailand loss of its trade preferences with key trading partners such as the European Union and the United States is pushing Thai firms to relocate production to countries which still receive the preferential trade treatment. The European Union's generalised scheme of preferences (GSP) was withdrawn from Thai products on 1 January 2015, while the United States announced the suspension in trade preferences for Thailand on 25 October 2019. Particularly when combined with the slowdown in economic growth and mounting cost pressures, the loss of GSP status has further induced Thai firms to relocate in neighbouring less advanced countries, namely CLMV, to take advantage of these countries' quotas in industrialised countries' imports.

Graduation from major export market's GSP scheme acts as a driver for a country's firms to relocate production abroad in many countries. South Korean firms relocated to Malaysia, Thailand, Viet Nam and eventually China following the loss for GSP privileges in the late 1980s (Nicolas et al., 2013). More recently, Viet Nam has been a favoured destination for such shifts in trade flows and production chains by Chinese firms. For these countries as well as in Thailand, low-margin lower value adding activities are more affected by the increased cost of their exports, such as apparel and textile.

Thai-based foreign firms are also relocating abroad

Foreign investors operating in Thailand are also restructuring their value chains and relocating labour intensive production stages to lower cost neighbouring countries. Production centres in new locations remain often tightly linked with regional headquarters in Thailand. Known as the Thailand-Plus-One strategy, it was spearheaded by Japanese companies with production in Thailand, but has since been adopted by other foreign MNEs (OECD-UNIDO, 2019).

The relocation of Thai-based foreign firms may create OFDI opportunities for their Thai suppliers. Thai firms could thereby expand their role as suppliers of lead firms. This form of s*upplier following assembler* motivation has been observed in several other Asian economies, such as Singapore and Chinese Taipei (Hiratsuka, 2006). Strategically coupling to global lead firms allows firms to become outward investors at an earlier stage as the client-supplier relationship reduces risks associated with OFDI (Yeung, 2017).

Acquisition of technology and brands is strategic

Thai firms can gain access to foreign strategic assets and capabilities such as proprietary technology, brands and distribution channels by investing abroad. Firm from developing economies in general stand to benefit considerably when acquiring technologies, know-how and skills from firms in more advanced economies, which may allow upgrading their own capabilities, transferring the technology to their home countries and moving into higher value added activities at home. By upgrading and transferring knowledge back to Thailand, the benefits of the acquisition abroad can spill over among other domestic firms. Furthermore, brand acquisition can also be a means to tap into existing consumer markets abroad, which has been particularly important for the expansion of Thai investors in the food and beverage sector.

M&As and strategic partnerships provide valuable opportunities for the generation of intangible capabilities in more advanced economies which can be transferred back to the home economy and enable domestic firms to expand upstream (sales and marketing) or downstream (technology and R&D), potentially into higher value added activities. How much firms can absorb and transfer back depends on their absorptive capacity, which also enhances their capacity to benefit from spillovers from foreign firms operating in Thailand. Many of the policies in place to enhance the benefits of inward FDI in Thailand, also positively affect future outward investor firms. Thailand has a set of programmes and policy instruments to promote R&D spending and boost firm competitiveness (Chapter 5). Promoting the acquisition of firms already engaged in R&D abroad could complement the policies already in place for the promotion of R&D within Thailand.

In many emerging economies, technology- and knowledge-acquisition is an important driver of OFDI, while this appears to be less true of Thai firms venturing abroad (Rasiah, Gammeltoft and Jiang, 2010). A recent enterprise survey indicates that less than 20% of the interviewed Thai firms invest overseas as a means to access technology or knowledge (Figure 11.8). Access to finance can be a constraint for these investment projects, as they can be potentially high-risk projects. Targeted or subsidised lines of credit could provide an alternative for promoting this type of investment abroad.

Policies to pave the way for outward FDI

Public policies can play an important role in firms' decision to invest abroad. Governments can support FDI outflows both through dedicated OFDI support measures (e.g. loans and grants for outward investors, investment insurance as well as technical and information services) and, more implicitly, through wider policies that support economy's internationalisation (such as capital flow liberalisation, investment protection, and trade policy) and competitiveness. Dedicated OFDI policies can reduce the costs and risks associated with investment projects and make investing abroad more attractive, while broader policies create the basic conditions for OFDI to occur. OFDI policies may shape outward investment patterns by encouraging some firms to undertake specific investments overseas (in particular countries or technologies) that they would not otherwise have carried out (Becker-Ritterspach et al., 2019). A partial mapping of the sequence in which OFDI policies are introduced in ASEAN economies indicates that countries initially reduce restrictions on OFDI, followed by the introduction of the provision of information services and negotiations of international treaties (ESCAP, 2020).

Policies positively affecting overall competitiveness of Thailand generally foster spillovers from both inward and outward FDI. Development of firm capabilities and absorptive capacity can enhance spillovers from OFDI in Thailand and dissemination through domestic value chains and are also an important prerequisite for enhancing spillovers from inward FDI. Both developing and developed countries typically use a combination of these policy mechanisms to enhance outward investment (Paul and Benito, 2018). Among developing economies, however, less than a handful have coherent policy packages on OFDI; namely China, Malaysia, Singapore and Chinese Taipei (Sauvant, 2017). This section reviews Thailand's OFDI-specific policies and provides some policy directions.

OFDI policy objectives should be well defined

OFDI policy objectives (e.g., upgrading, innovation, exports, revenue, and diversification) should guide how governments can best support OFDI. Thailand's National Economic and Social Development Plan 2017-2022 envisions enhancing Thai entrepreneurs' business skills, an increase in business cooperation with neighbouring countries and investments in human resources, technology, and innovation as a main outcome of Thai OFDI. Outlined policy objectives are broad, with multiple intended outcomes.[6] Establishing clear policy objectives of OFDI policy is central as these policies may not just provide incentives to firms in general to invest overseas, but could potentially alter the strategic priorities and geographical focus of some firms (Becker-Ritterspach et al., 2019).

Much of the support services that are offered are focused on ASEAN, particular CLMV countries, and contribute to the strengthening of regional cooperation. Investments in higher value added activities (such as technology and innovation) are more likely to take place outside the ASEAN region, in developed economies where investment opportunities are concentrated. Support services for OFDI aimed at developed economies are relatively underdeveloped. A more in-depth vision and objectives for OFDI, together with clearer targets, could facilitate development of a more targeted OFDI policy framework which is more supportive.

Significant research gaps remain related to how governments – both in developed- and developing markets – vary in their support for OFDI. Only a limited number of OFDI policy-mapping case studies exist and among those analysing developing countries, most focus on the Chinese case. OFDI policy best practices are only broadly understood. Conducting a comparative review of OFDI policy frameworks and governance in other relevant outward investing countries with similar policy objectives (such as Japan and Korea) could help define and prioritise OFDI policies in Thailand.

Coordination can help ensure that OFDI policies are coherent

In Thailand, several public institutions are involved in the formulating and implementing of OFDI-related policies: the Bank of Thailand regulates capital outflows; the Ministry of Commerce is in charge of negotiating free trade agreements, the Ministry of Foreign Affairs is in charge of negotiating investment promotion and protection agreements (Chapters 7 and 8); and the Board of Investment (BOI) carries out OFDI promotion and facilitation policy. The BOI focuses on outward investment primarily in ASEAN and other targeted countries, while the Department of International Trade Promotion (DITP) renders indirect support (i.e. providing information through Office of Commercial Affairs) to smaller countries. Business associations also play a role in promoting outward investment in specific destination countries, for instance, through bilateral chambers of commerce. BOI's OFDI promotion policy and mandate was adopted only recently in 2013. Investment promotion agencies (IPA) with a mandate to promote of both inward and outward FDI, as is the case of the BOI, are not uncommon. Around 30% of IPAs accumulate both these mandates in OECD countries, (OECD, 2018b).[7] The Ministry of Finance (Revenue Department) has the authority to grant tax exemptions on dividends from offshore investments, while the Export-Import Bank of Thailand (EXIM Thailand) provides loans and foreign investment risk insurance.

The large number of institutions involved in OFDI promotion requires inter-agency coordination to ensure that policies are aligned and effective. Thailand's National Economic and Social Development Plan 2017-2022 envisions a coherent policy on OFDI that fosters the creation of competitive national firms capable of internationalising. Greater inter-agency coordination can contribute to aligning reform priorities across government bodies.

Liberalising capital controls is a pre-requisite for the expansion of OFDI

Liberalising capital controls is an important ingredient enabling domestic firms to become multinational enterprises.[8] Capital outflow liberalisation promotes OFDI without discriminating by type or destination of investments, ensuring that investments perceived as profitable can take place (Pananond and Cuervo-Cazzura, 2015).

In Thailand, deregulation and liberalisation of capital controls started in the 1990s and proceeded at a slow pace in the years following the 1997 Asian Financial Crisis (Edison and Reinhart, 2000; and Pongpattananont and Annonchar, 2012). The Bank of Thailand has gradually expanded the limits on investments in foreign countries (Pananond and Cuervo-Cazzura, 2015). Liberalisation and restrictions of OFDI capital flows have been introduced to promote more balanced capital flows and as well as to address the volatility of the THB.

Overseas direct investment caps at USD 100 million for Thai listed firms were removed in 2007. Since 2009, enterprises with a value of 5 billion baht (USD 151 million) in assets have been permitted to invest directly in foreign securities without going through mutual or private funds, up to a limit of USD 50 million. Thailand's Capital Account Liberalisation Master Plan 2012 removed remaining outward direct investment caps for Thai residents and companies (Bank of Thailand, 2012). The important role of the removal of these restrictions is illustrated by the significant boost of OFDI as a share of GDP since 2010, from approximately 5% in 2010 to almost 25% in 2017 (see Figure 10.1 above).

Strict regulation was maintained on the repatriation of foreign currency received offshore, as export proceeds had to be remitted back to Thailand except for transactions of less than USD 1 million. In 2019, the Ministry of Finance and the Bank of Thailand decided to further relax exchange control regulations to stimulate capital flows and lower pressure on the Thai baht. Under the new regulation, the exemption on remittances was increased to USD 200 000, with plans to a further increase it to USD 1 million in 2020.

Investment treaties play a role in firms' decision of where to invest abroad

Investment treaties protect covered Thai investors from certain host government conduct and abuse. Treaties typically provide protection from expropriation, discrimination or unfair treatment. They can provide additional protection to covered investors beyond that provided in national legal frameworks, including the constitution, laws and regulations. Traditionally, treaties were signed to attract FDI to Thailand. With expanding overseas investments, these treaties become increasingly relevant for the protection of Thai outward investors as well (see Chapter 8 for a detailed discussion on investment treaties).

Thailand is a party to 47 investment treaties that are in force today (Chapter 8). These include 37 bilateral investment treaties (BITs), three bilateral trade and investment agreements and seven plurilateral agreements concerning investment in the context of Thailand's membership of ASEAN. These agreements cover some of the main investing countries in Thailand (87% of inward FDI stock), as well as some of the major destinations for Thai investments (75% of outward FDI stock), including China and ASEAN Member States.

Double Taxation Agreements and tax incentives reduce the cost of OFDI

Beyond investment protection treaties, double taxation agreements (DTAs) ensure that incomes generated by Thai investments are not taxed twice (i.e. in host countries and in Thailand). The main purpose of DTAs is to divide the right of taxation between the contracting countries, to avoid differences, ensure taxpayers' equal rights and security, and prevent evasion of taxation. Model tax treaties typically do not require tax rate coordination, but do require that credits or exemptions be applied to repatriated earnings.[9] Just like investment treaties, DTAs have often been introduced to alleviate the tax burden for investing firms in Thailand. As Thai firms increasingly invest abroad, these treaties also alleviate the tax burden of Thai companies entering foreign markets.

Thailand uses a worldwide income tax system and Thai companies must pay income taxes regardless of where it is derived. DTAs can eliminate double taxation by either exempting income tax on remitted revenues (exemption method) or retaining the right to tax income on remitted revenues but allowing for deduction of tax paid abroad (credit method). Thailand has signed 61 DTAs including with all AMS, except Brunei Darussalam, which use both these methods (Revenue Department, 2019) (see Annex 10.A for a complete list). Under signed DTAs with a credit method, a Thai company can use foreign taxes paid on business income or dividends as a credit against its CIT liability, but the credit cannot exceed the amount of Thai tax on the income. For countries for which a DTA does not exist, there are provisions within the Royal Decree No. 300, which allow unilateral credit relief against Thai taxation for taxes paid in the other country by a Thai juridical person. Dividends payed to Thai investors in countries with which Thailand has not signed DTAs are also exempt from taxation under certain conditions (PKF, 2016).

Under DTAs, the tax treatment of remitted earnings covers only capital flows between the countries involved in the agreements, but governments may offer broader tax incentives for investments overseas that go beyond avoiding double taxation. For OFDI, tax incentives are frequently linked to deductions for repatriated earnings. Singapore offers tax exemptions on all remitted profits abroad which encourages Singaporean firms to remit their profits back home rather than directing them elsewhere (Rasiah, Gammeltoft and Jiang, 2010). In addition, certain expenses linked to international market expansion and investment development activities are eligible for enhanced tax deduction on payable taxes in Singapore under the Double Tax Deduction for Internationalisation incentive (ES, 2019). Malaysia also implemented targeted tax incentives for OFDI in the past (Box 11.1).

Box 11.1. Tax incentives for Malaysian outward investors

Malaysia's growing importance as an outward investor began in the 1990s. After gradually lifting capital controls in the aftermath of the Asian Financial Crisis, the country experienced an upsurge in outward investments from the mid-2000s. Tax incentives for outward investments may also have contributed to increasing OFDI: first generation tax incentives for OFDI were implemented in the early 1990s, including tax abatement on income generated overseas (Masron and Shahbudin, 2010). Since 1995, Malaysian firms investing abroad have benefited from a complete tax exemption on income generated abroad (Zin, 1999). Banking, insurance and maritime and air transport businesses were excluded from this regime.

Between 2003 and 2008, Malaysian firms acquiring foreign-owned high-tech firms either within Malaysia or abroad as a way to gain new export markets were granted a five-year deduction for the cost of acquisition (Yean, 2007).10 The objective of this incentive was to encourage Malaysian companies to acquire foreign companies which possess specific technologies used in manufacturing and selected services. The incentives was re-introduced between 2012 and 2016, but have now been cancelled. Malaysia continues to promote OFDI through other policies, such as through grants for market research to identify strategies for foreign market entry and other policies (MIDA, 2014).

A substantial amount of FDI income tends to be reinvested, but when remaining funds are repatriated and reinvested in the home economy, the home country stands to benefit economically as repatriated earnings may be reinvested or distributed at home (Knoerich, 2016). Profits kept abroad are used in line with corporate strategies and needs, but may also be accumulated overseas, particularly flowing to tax havens. Policies could be introduced to stimulate the repatriation of profits and reduce offshore tax avoidance.

The Thai policy regime for OFDI does not allow for investment tax incentives on payable taxes based on investment activity overseas. However, the BOI provides tax incentives for foreign and domestic companies with regional or international headquarters (HQ) operations in Thailand. Under the International Business Centre Regime (IBC), companies with subsidiaries abroad (i.e. with OFDI from the perspective of Thailand as a home country) can benefit from reduced corporate income taxation. While this policy may not be intended to foster OFDI as such, it can still benefit outward investors in Thailand.

Investment insurance provides additional guarantees for investors

Investment insurance, also referred to as political risk insurance, is an instrument offered to outward investors to mitigate political risks associated with the unlawful interference by host governments in the operations of foreign affiliates (Sauvant et al., 2014). The provision of such insurance may induce firms to undertake larger investments than they would have otherwise. Such measures were traditionally offered by developed countries, but as some countries in the region have become significant outward investors, they too have begun establishing political risk insurance for their firms. The EXIM Malaysia started offering insurance in 1977, and Singapore in 2012.

EXIM Thailand also offers investment insurance coverage for up to 90% of loss actually incurred (EXIM Thailand, 2019). EXIM Thailand has offered insurance risk only since 2017, when the bank expanded on its policy to stimulate and promote overseas investment. In 2018, the Bank approved insurance for over USD 100 million of investments. Most of its insurance projects are in CLMV countries and are provided for large energy and infrastructure projects. Hedging risks through investment insurance make destination countries with relatively weak institutions more attractive. The EXIM Thailand plans to expand its investment insurance market as Thai investments in CLMV are projected to continue growing.

Financial support can help outward investments

EXIM Thailand is an active player in providing financial support in the form of loans for Thai investments abroad. As of the end of 2018, it had an aggregated amount of credit lines for overseas investment projects of USD 2.8 billion (THB 84 billion). Loans for OFDI are quickly expanding, with the loans in 2018 increasing already 25% compared to the previous year. Around 60% of these credit lines were for investments into CLMV countries (EXIM Thailand, 2019). EXIM Thailand also established a physical presence in some of these countries, for example in Myanmar to provide one-stop-services and stimulate Thai-Myanmar investments. The Neighboring Countries Economic Development Cooperation Agency (NEDA) also provides financial support to OFDI Thai investing in neighbouring CLMV countries.

Financing can cover the entire investment project or specific stages of the investment process, such as feasibility studies and seed funding for smaller domestic firms. Loans to finance OFDI are provided either as direct loans and grants to businesses or through a co-sharing scheme where the risks of default are shared with commercial lenders. For example, the Malaysia-Singapore Third Country Business Development Fund offers grants of up to USD 33 000 for market research to identify strategies for market entry and business opportunities or to analyse the business environment of a specific destination country and sector (MIDA, 2014). Singapore offers similar grants under its Enterprise Development Grants for improving Market Access. The grant funds up to 70% of qualifying project costs, namely third party consultancy fees, software and equipment, and internal manpower cost.

Financing could also be used to support certain types of investment overseas that could be of interest for the domestic economy, such as to technology, R&D capacity, or brand names (Dunning, 2001). Enterprise Singapore has a targeted line of credit for financing the acquisition of overseas enterprises. Companies with at least 30% Singaporean ownership can apply for a loan of up to USD 37 million (SGD 50 million) for acquisitions overseas, including co-shared loan default risk of up to 70% in the event of enterprise insolvency (ES, 2019).[11] A specific line of credit is also available for SMEs (up to USD 22 million) which can be used for either the purchase or construction of factories and business premises under the risk co-sharing guarantees.[12]

OFDI financing can be controversial, particularly concerning subsidised loans in credit restrained economies. The Brazilian Development Bank (BNDES) modified its statute in 2002 to allow financing the acquisition of productive assets abroad by Brazilian companies, conditional on increased exports from Brazil. BNDES failed to effectively show how the OFDI line of credit brought positive impacts.[13] In November 2019, the Brazilian senate approved a law to prohibit new concession of loans for projects abroad, effectively cancelling this instrument. Transparency in use of funds for projects overseas and the benefits generated for the home economy need to be clearly outlined, communicated and linked to the broader development policy.

OFDI promotion can reduce information barriers and provide technical advice on overseas investments

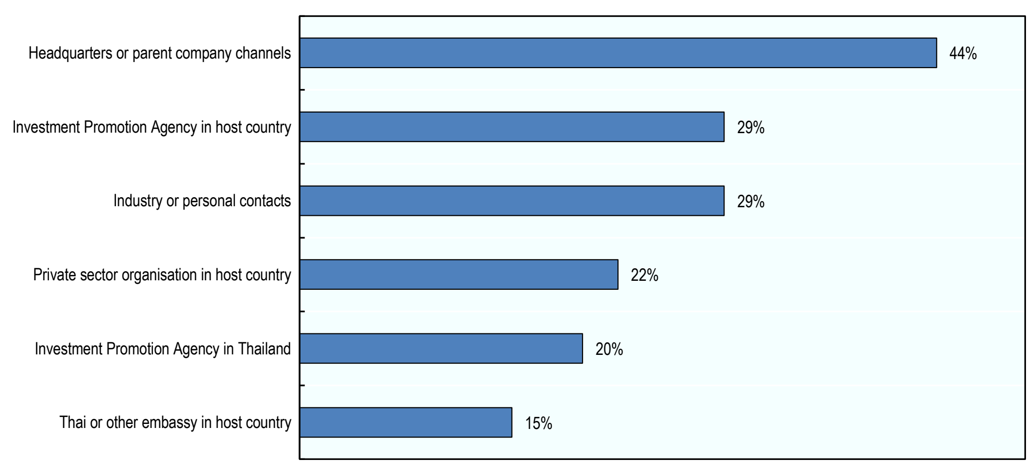
A recent enterprise survey reveals that Thai outward investors rely extensively on firm-internal channels, industry contacts and activities of host country investment promotion agencies for information on investment opportunities abroad (Figure 11.9). One in five of the surveyed outward investors reported that they became aware of OFDI opportunities through the BOI. Some firms participating in the survey mentioned that they were not aware of public and private services to provide assistance on OFDI projects.

Smaller companies that are less connected in foreign markets can benefit extensively from information services and technical advice provided by public and private institutions at home as they lack internal resources to do so independently. Evidence from Japan and Korea provides good practice examples of policies that can be implemented by IPAs to support internationalisation (Box 11.2).

This highlights that current BOI efforts may still lack the scale to be accessible to a broad range of potential outward investors. Since the BOI added OFDI policy to its mandate in 2013, it has supported around 500 Thai SMEs in their OFDI undertakings. The BOI's role in information provision to SMEs vis-à-vis other agencies such as the Department of International Trade Promotion is not fully clear. The BOI reports that their efforts remain limited due to resource constraints, including with respect to staff. The government could consider to expand resources for the BOI to engage in information services and technical advice.

Figure 11.9. Thai firms rely more on internal information channels or host market to inform themselves about investment opportunities abroad

How did your firm initially become aware of investment opportunities outside Thailand?



Note: Figures based on 41 responses from Thai manufacturing and service firms with outward investments.
Source: based on OECD-UNIDO (2019).

As Thai enterprises venture abroad, the government could support outward investors in their supply chain due diligence with respect to responsible business conduct and supply chain due diligence. The OECD *Due Diligence Guidance for Responsible Business Conduct* holds enterprises subject to the same expectations in respect of their conduct when operating in their home country or overseas (see Chapter

9). Establishing guidelines, making business aware of the guidelines and establishing accountability on conduct can help ensure that Thai enterprises uphold the same standards abroad as at home, including during the COVID-19 global economic crisis and recovery period. The 2019-2022 National Action Plan on Business and Human Rights recognises the challenge posed by the lack of clear guidelines on due diligence as a risk to human rights violations in Thai investment projects overseas. The implementation of the action plan for 2019-2022 should contribute to increasing due diligence of Thai firms abroad.

Capacity building for outward investors is a policy option to increase awareness among investors. The Securities and Exchange Commission (SEC) of Thailand and it partners plan to implement a capacity building programme addressing due diligence in investment abroad for listed Thai companies. Specific capacity building for mining and agricultural value chains could also be considered, building on existing industry specific recommendations and good practices.[14] Smaller and non-listed outward investors are an equally important target group as they have more limited resources and are proportionally larger investors in CLMV. The BOI could consider combining its OFDI information services to potential outward investors with follow-up capacity building on due diligence if firms decide to invest abroad.

Box 11.2. Proactive OFDI promotion in Japan and Korea

The Japanese External Trade Organisation (JETRO) was established in 1958 to promote trade and investment relations between Japan and the rest of the world. While JETRO's core focus is to promote inward FDI and exports, JETRO also assists Japanese firms to expand overseas. The Korean Trade and Investment Promotion Agency (KOTRA) similarly supports Korean firms seeking overseas investment.

JETRO advises Japanese companies about business opportunities abroad, facilitates business linkages through exhibitions and trade fairs, and provides investment information through publications and seminars. KOTRA has created an Overseas Investment Information System for potential investors, which provides a range of information about investing overseas: from the latest news about investment activities worldwide to country-specific investment information. KOTRA further provides support throughout the overseas investment process, assisting investors also with host country procedures.

Encouraging SMEs to venture abroad has recently become an important policy objective both for JETRO and KOTRA. Hayakawa et al. (2014) found that outward FDI promotion activities undertaken by JETRO and KOTRA have a significant positive impact on promoting investment of small and less productive firms, as well as in stimulating investments in politically risky countries – where political risk is typically strongly correlated with business risk. SMEs are less likely to venture abroad and have fewer internal resources to evaluate potential projects overseas, making the support of IPAs more central to their decision to internationalise. Larger and more productive firms have greater internal capacity to navigate high-risk markets.

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Annex 11.A. List of Thailand's double tax treaties

No.	DTA partner	Date of entry into force	First taxable year
1	Armenia	12-11-2002	01-01-2003
2	Australia	27-12-1989	01-01-1990
3	Austria	01-07-1986	01-01-1986
4	Bahrain	27-12-2003	01-01-2004
5	Bangladesh	09-07-1998	01-01-1999
6	Belarus	02-09-2006	01-01-2007
7	Belgium	28-12-1980	01-01-1980
8	Bulgaria	13-02-2001	01-01-2002
9	Cambodia	26-12-2017	01-01-2018
10	Canada	16-07-1985	01-01-1985
11	Chile	05-05-2010	01-01-2011
12	China, P. R	29-12-1986	01-01-1987
13	Chinese Taipei	19-12-2012	01-01-2013
14	Cyprus[15]	04-04-2000	01-01-2001
15	Czech Republic	14-08-1995	01-01-1996
16	Denmark	12-02-1999	01-01-2000
17	Estonia	23-12-2013	01-01-2014
18	Finland	26-02-1986	01-01-1987
19	France	29-08-1975	01-01-1975
20	Germany	04-12-1968	01-01-1967
21	United Kingdom	20-11-1981	01-01-1981
22	Hong Kong	07-12-2005	01-01-2006
23	Hungary	16-10-1989	01-01-1990
24	India	05-01-2016	01-01-2017
25	Indonesia	21-10-2003	01-01-2004
26	Ireland	11-03-2015	01-01-2016
27	Israel	24-12-1996	01-01-1997
28	Italy	31-05-1980	01-01-1978
29	Japan	30-08-1990	01-01-1991
30	Korea	29-06-2007	01-01-2008
31	Kuwait	25-04-2006	01-01-2007
32	Laos	23-12-1997	01-01-1998
33	Luxembourg	22-06-1998	01-01-1999
34	Malaysia	02-02-1983	01-01-1983
35	Mauritius	10-06-1998	01-01-1999
36	Myanmar	15-08-2011	01-01-2012
37	Nepal	14-07-1998	01-01-1999

No.	DTA partner	Date of entry into force	First taxable year
38	Netherlands	09-06-1976	01-01-1976
39	New Zealand	14-12-1998	01-01-1999
40	Norway	29-12-2003	01-01-2004
41	Oman	27-02-2004	01-01-2005
42	Pakistan	07-01-1981	01-01-1979
43	Philippines	05-03-2018*	01-01-2019*
44	Poland	13-05-1983	01-01-1983
45	Romania	13-04-1997	01-01-1998
46	Russian	15-01-2009	01-01-2010
47	Seychelles	13-03-2006	01-01-2007
48	Singapore	15-02-2016	01-01-2017
49	Slovenia	04-05-2004	01-01-2005
50	South Africa	27-08-1996	01-01-1997
51	Spain	16-09-1998	01-01-1999
52	Sri Lanka	12-03-1990	01-01-1991
53	Sweden	26-09-1989	01-01-1990
54	Switzerland	19-12-1996	01-01-1997
55	Tajikistan	23-12-2013	01-01-2014
56	Turkey	13-01-2005	01-01-2006
57	Ukraine	27-11-2004	01-01-2005
58	United Arab Emirates	28-12-2000	01-01-2001
59	United States of America	15-12-1997	01-01-1998
60	Uzbekistan	21-07-1999	01-01-2000
61	Vietnam	31-12-1992	01-01-1993

Source: Revenue Department of Thailand.

Notes

[1] The Bank of Thailand regulates capital outflows. The Ministry of Commerce is responsible for the Negotiations of Free Trade agreement (FTA) while the Ministry of Foreign Affairs is in charge of Negotiating Bilateral Investment Treaties (BITs). The Board of Investment (BOI) carries out OFDI promotion and facilitation policy. The BOI focuses on outward investment primarily in ASEAN and other targeted countries, while the Department of International Trade Promotion (DITP) renders indirect support i.e. providing information through Office of Commercial Affairs abroad. The Ministry of Finance (Revenue Department) has the authority to grant tax exemptions on dividends from offshore investments, while the EXIM Bank of Thailand provides loans and foreign investment risk insurance.

[2] Thailand became a net outward investing country since 2012, with the exception of two years (2013 and 2015). OFDI flows surpassed those of inward for the first time in 2012, than again in 2014. Since 2016, Thailand has consistently been a net outward investing country.

[3] This section uses greenfield data from Financial Times FDI Markets and M&A data from Dealogic. Data on greenfield FDI and M&A are likely to vary significantly as they are measuring two distinct types of investments. Moreover, announced greenfield FDI and reported M&A vary significantly from official FDI statistics from the Bank of Thailand. For example, Singapore is the destination of around 12% of Thai FDI according to Bank of Thailand data, while it represents less than 1% of greenfield projects. The difference is partly due to trans-shipping of investment through Singapore and the setting up of international trade and financing functions there (Hiratsuka, 2006). Investments in Singapore may not be the final destination of Thai investments. While official FDI statistics typically capture the immediate destination of OFDI, data on announced greenfield investment capture the final destination. Accordingly, there can be significant differences in terms of destination and sectoral distribution of Thailand's OFDI across data sources.

[4] A positive link between OFDI and exports is found for countries such as China (Liu, Wang and Wei, 2001), Malaysia (Goh, Wong, and Tham, 2013), India (Narayanan and Bhat, 2011) and in Latin America (Cuervo-Cazurra, 2008).

[5] This is discussed in Cheewatrakoolpong & Satchachai (2017), Masron & Shahbudin (2010), and Pananond (2013).

[6] Malaysia, for example, has focused its OFDI policy objectives on maximising the export-generating potential of OFDI and integrating it with the export promotion agency's investment promotion strategy (ESCAP, 2020).

[7] In Malaysia, the OFDI policy mandate lies with the Malaysia External Trade Development Corporation (MATRADE), while the Philippines has not designated a government department with responsibility for OFDI policy (ESCAP, 2020).

[8] Capital controls represents any measure taken by a government, central bank or other regulatory bodies to limit the flow of capital in and out of the domestic economy. The OECD Code of Liberalisation of Capital Movements includes legally binding obligations in the area of capital flows for adhering countries, see full text at: http://www.oecd.org/daf/inv/investment-policy/Code-capital-movements-EN.pdf

[9] When profits are generated overseas, they are taxable by the host government. Once repatriated, the profits may be taxed again by the home country. To avoid the double taxation of profits of MNEs, many governments offer credits, deductions or exemptions for repatriated earnings. Under the deduction method, the home country treats host-country taxes as costs and after-host-tax profits are taxed at the home-country statutory rate. Under the tax credit method, the home country offers a credit when calculating the payable home tax.

[10] To be eligible to receive the tax benefit, companies have to be at least 60% Malaysian owned.

[11] Enterprise Singapore will co-share up to 50% of the loan default risk and up to 70% for young enterprises (less than 5 years and more than 50% equity owned by individuals) and high risk destinations (Standard and Poor country rating below BBB-).

[12] For "SME Fixed Assets", the SME definition refers to Group revenue of up to SGP 100 million or maximum employment of 200 employees. Borrowers must not be part of be majority-owned by a group with a revenue of more than SGP 500 million.

[13] Credit for acquisitions overseas increased steadily and reached an accumulated USD 5 billion by 2011. Since 2013, BNDES has faced harsh criticism for providing financing for infrastructure projects implemented by Brazilian construction firms abroad when opportunities for investment within the country.

A generalised lack of transparency and corruption allegations concerning concession of loans abroad further aggravated the situation.

[14] The OECD *Due Diligence Guidance for Responsible Mineral Supply Chains* provides detailed recommendations to help companies respect human rights and avoid contributing to conflict through their mineral purchasing decisions and practices. FAO (2016) summarizes the policy good practices in responsible foreign investment in in nine selected OECD countries.

[15] Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognizes the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus" issue.

OECD Investment Policy Reviews

THAILAND

Thailand has had a remarkable economic development trajectory over the past 60 years and foreign direct investment (FDI) has been pivotal in this success. Thailand was one of the first movers in opening up to manufacturing FDI and in establishing proactive investment promotion and facilitation policies. While challenges remain in some areas of responsible business conduct, there is strong political will to address them. Thailand aspires to become a high income economy by 2037 by upgrading to a value based green economy. Inward FDI will play a prominent role in achieving this goal but this requires a concerted effort to reform the investment climate to remain an attractive host to foreign investment and to benefit to the full extent from that investment. While the COVID-19 crisis might temporarily delay progress, the policy recommendations in this review draw attention to potential reform priorities to help Thailand fulfil its development ambitions aligned with the Sustainable Development Goals and to contribute to a more inclusive and sustainable recovery from the pandemic.

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