STIMULATING FDI – AN ESSENTIAL FOR COVID 19 ECONOMIC RECOVERY
A TIMELY REVIEW OF FBA PRIORITIES
A PROPOSAL BY JFCCT
19 OCTOBER 2020

The Joint Foreign Chambers of Commerce in Thailand (JFCCT) is the umbrella body for some 34 foreign chambers of commerce, serving the Thai economy and foreign business community for 44 years. There are almost 9,000 companies in this network. JFCCTs mission is to promote trade and foreign investment, encourage skills development and transfer with the overall aim of contributing to the economy of Thailand, the country in which we live and work and to which we have made our commitments. JFCCT has taken a keen interest in business continuity and economic recovery in these COVID 19 circumstances.

Executive Summary

i) Changes to List 3 of the Foreign Business Act have not kept up with changes in the market or in the economy. This fact is holding Thailand's competitiveness back; it is a barrier to investment attractiveness. Add to this that Thailand is facing its most severe economic crisis in living memory.

ii) It is essential to attract new and support existing FDI by way of expansion and flexibility. A message that Thailand is open for business is essential to avert business failure, loss of Thai jobs and shore up trust and confidence in Thailand as an investment destination.

iii) Opening up List 3 will thus be a key tool in economic recovery.

iv) JFCCT proposes suspending List 3 for three years (roughly the expected period for return to pre COVID 19 levels of growth), then working on permanent removals in three stages over that time, which are specified in JFCCT's Proposal. This limited duration of special treatment would stimulate urgently needed FDI. Investments in any sector would enjoy investor protection, the suspension would cease after three years, with a revised List 3 reflecting certain permanent removals.

Necessity for FDI

Prior to the pandemic, in January 2020 at the launch of the Thailand Economic Monitor, the World Bank forecast GDP growth for 2020 at 2.7% (after a 2019 out-turn of 2.4%). In order to have a chance of achieving high income status within the expected time frame, the World Bank recommended productivity enhancement, greater FDI (including through service sector liberalisation) and other measures. In the period since, more immediate

COVID 19 survival and economic support measures have somewhat crowded out such longer term strategic goals.

But the implementation of these strategic goals is amongst the very things necessary for post COVID 19 economic recovery. Urgent action is needed now to stimulate FDI. Liberalisation of services is not only a means of overcoming the middle income trap but also vital for stimulating industries and economic recovery. This not only applies for new projects but ***expansion of existing investments***, ***saving existing investments*** and ***keeping Thai jobs.***

Current average GDP forecasts for the Thai economy are in the – 8% to – 10% range for 2020. Post COVID 19 growth rates will depend on how deep the eventual downturn is in 2020 and how well equipped Thailand is to support economic recovery through FDI and other measures. Growth rates aside, ***pre COVID 19 GDP levels are not expected to be achieved for at least two to three years***. Thus many have noted that Thailand is facing the worst economic crisis in living memory.

Support from government is greatly appreciated. Obviously however, government support measures have a cost and cannot continue beyond the short to mid term. Other policies and measures are also required for economic recovery.

For a long time, economists, business groups (local and foreign) and others have recommended ***removal of items from List 3*** of the FBA in order to remove deterrents to growth and in recognition of the purpose to allow competition in all areas where Thai companies are ready to compete. TDRI have made detailed studies of what should be removed from List 3. There have been only four groups of removals since 1999 when the FBA came into force (in 2013,2016,2017,2019), the result of most of which has not materially advanced liberalisation due to other legislation covering the same topics or as the changes have been small. List 3 is designed to protect local industries not ready to compete. But the fact is that many are ready and do compete.

JFCCT made a major submission in June 2018 about the importance of taking action on List 3. That proposal is attached for reference. Since then there has been only one additional change (in 2019) to List 3, to remove intra-group services.

In order to keep abreast with neighbouring countries which have already successfully negotiated various FTA's covering those sectors in which Thai businesses are thought “not ready to compete”, Thailand needs to consider new approaches and fresh trade-in-services strategies. Thailand must ***avoid at all costs the trade and investment diversion of her prominent and successful global value chains (GVCs)*** – for example in goods: the automotive value chain, and in services: hospitality and tourism. Tourism is suffering greatly; innovations in tourism would be stimulated by these new approaches.

If sectors in the Thai economy don't allow transfer of new technologies or new service industry paradigms in a global environment of ever-changing comparative advantages, they are ***not likely ever to get ready to compete***. Such sectors will always be behind the rest of the world or preserved eternally in their original forms. Thailand would be out-competed and would never get out of the "middle income trap".

Getting ready requires retooling by opening up for modernization and competition, welcoming those foreign companies which can help train Thai firms to deliver world class services and products and also get Thai companies up to speed in areas where in the past they may not have been competitive. Thus, ***competition should not be shunned, rather many sectors and companies would do well from competition.***

The underpinnings of the FBA date back to the early 1970s, almost two generations ago. Since then, ***significant educational and economic modernization has occurred*** and it would appear that Thai companies in many industries are not only ready to compete and to do well, but can likely achieve world class success.

Impetus for some relatively modest but important changes now

1) Thailand faces the greatest economic crisis in living memory. FDI is essential for economic recovery, it is not something to defer to after the pandemic has passed or something to let fritter away or be lost through attrition or inattention. With flexibility and relaxations, markets will find ways to support business continuity and survival, including where restructuring is necessary to achieve that survival.

2) Ventures including joint ventures need the flexibility of existing or new foreign partners taking up majority positions to support investors facing cash flow challenges and other difficulties.

3) These changes are important to keep Thai jobs. Foreign ventures and foreign-local ventures are significant employers of Thai workers, including in upcountry areas and on the Eastern Seaboard.

4) Support of existing investment positions where expansion is possible, as well as new investment, will cement investor loyalty to Thailand, strengthen commitment and would be a show of trust and confidence.

5) Avoids deferring the uplift in Thailand's competitiveness.

6) Recognises the reality that in almost every case, sectors are ready to compete. This JFCCT proposal is not about Lists 1 or 2, only about List 3.

Other barriers to doing business

The Foreign Business Act regulates activities of firms which have more than 49% foreign ownership. There are two other layers of regulation which in time should be reviewed in order to stimulate skills development and better to support foreign investment. These apply to individuals and can render the investment less valuable if not addressed.

- An April 2020 Notification about 39 professions not open to foreigners, which replaces a 1979 Decree
- Profession-level restrictions on activities.

For immediate purposes, we focus on activities of firms - ie List 3 of the Foreign Business Act.

Recommendations

The scale and depth of the economic crisis demands bold action. Serious consideration should be given to suspending the whole of List 3 (with possible exceptions which JFCCT invites the Ministry of Commerce to identify) for a period of three years to give the best possible chance for this means of supporting economic recovery.

Under such an umbrella, we also propose to prioritize areas of focus, in stages, for permanent removal:

Stage 1:

- Services – logistics
- Services – engineering (item 9) with clearance to participate locally and tender for publicly-funded projects

Stage 2:

- Accounting services business (item 6)
- Architecture services business (item 8)
- Item 21 of List 3: We recommend removal of this 'catch all'; and invite MOC then to propose and support only a limited number of specific areas which should not be so removed. In particular, the following should be specifically removed:
    - All business support services of any kind (many of which are BOI promoted), including standard and advanced BPO, call centres, fulfilment centres and TISO whether in support of regional HQ or similar or

otherwise be removed from List 3, in addition to those provided on an intra-group basis
    - Insurance services
    - Software development (which is a BOI promoted activity anyway)
    - Research and Development
    - Education services (primary, secondary, tertiary)

Stage 3:

- Hotel business (other than hotel management service). (Item 17)
- Telecoms – we recommend that telecoms services be removed from List 3. Practically this applies only to category 1 licences. JFCCT has a structured recommendation on this topic. The Telecoms Business Act which restricts foreign investment in category 2 and 3 licences should also allow greater foreign equity.

Investments made during the suspension period would have the normally expected investor protections; a kind of grandfather status, such that even if such business activities were not permanently removed from List 3, the original investment would continue to be honoured. List 3 at the end of the suspension period (at which time the suspension would cease) would, per JFCCT's recommendations, reflect the permanent removals as proposed.

How:

A Ministerial decision is needed (in practice this has been supported by a cabinet decision) to change List 3. Under the current State of Emergency, the Prime Minister has powers under the FBA, whether by suspension or removal.

A. Effect a suspension of the whole of List 3 as an urgent matter (save possibly for a limited negative list of items specifically designated by MOC) for three years; and

B. Remove permanently the items in the recommendations from List 3, by stages over the three-year period.

JFCCT respectfully offers dialogue on these proposals and will be pleased to provide more information.

Chairman, JFCCT
19 October 2020
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