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

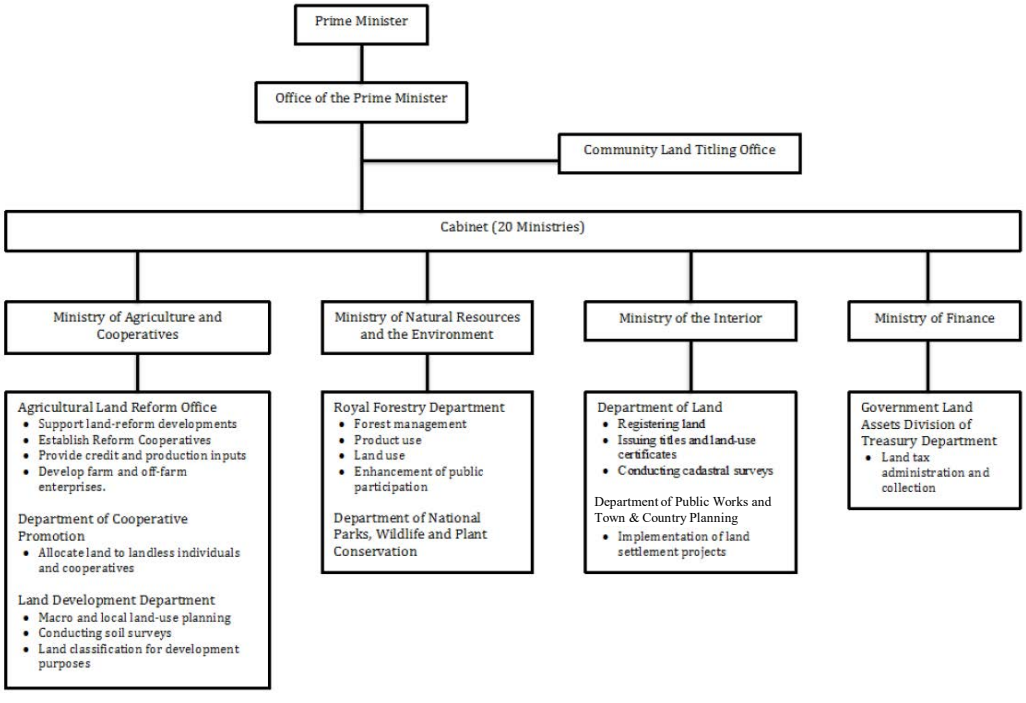
Thailand's land administration system is considered to be an efficient and transparent model for other countries in the region (USAID, 2011). Thailand ranks 67th out of 190 countries in the World Bank's Doing Business 2020 Report on the indicators relating to the efficiency and quality of land ownership 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

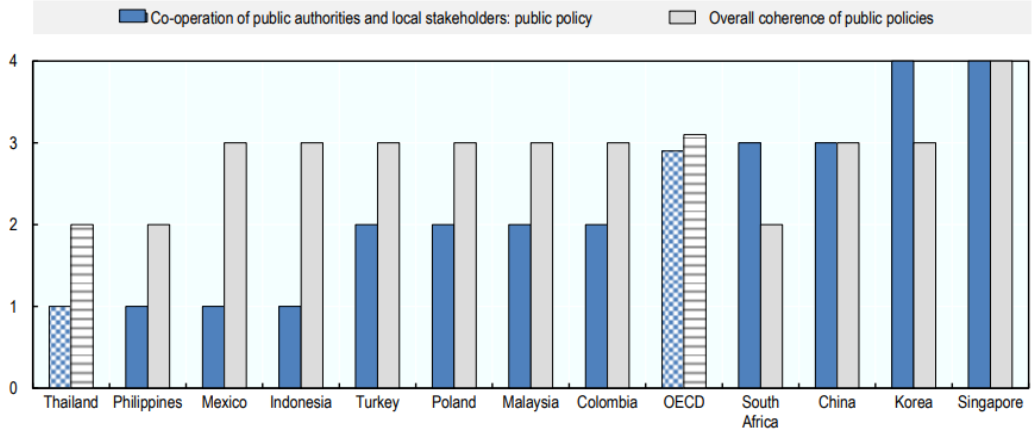
Business Operations. A range of international organisations, business associations and other parts of government, including the BOI and the Bank of Thailand, contributed to the project.

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

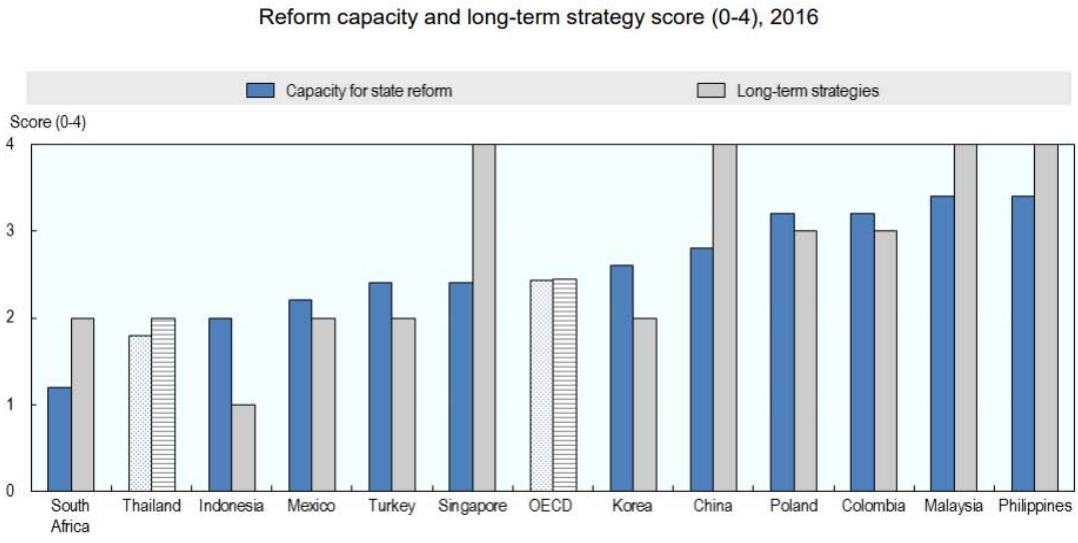
The ongoing challenge will be for the government to ensure that these promising initiatives translate into better public services throughout the country. There is still room for improvement on the ground: Thailand ranks behind most comparators in terms of co-operation with local stakeholders and bureaucratic 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



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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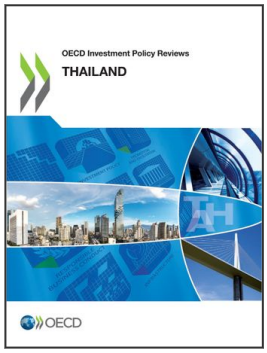
Notes

[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.



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