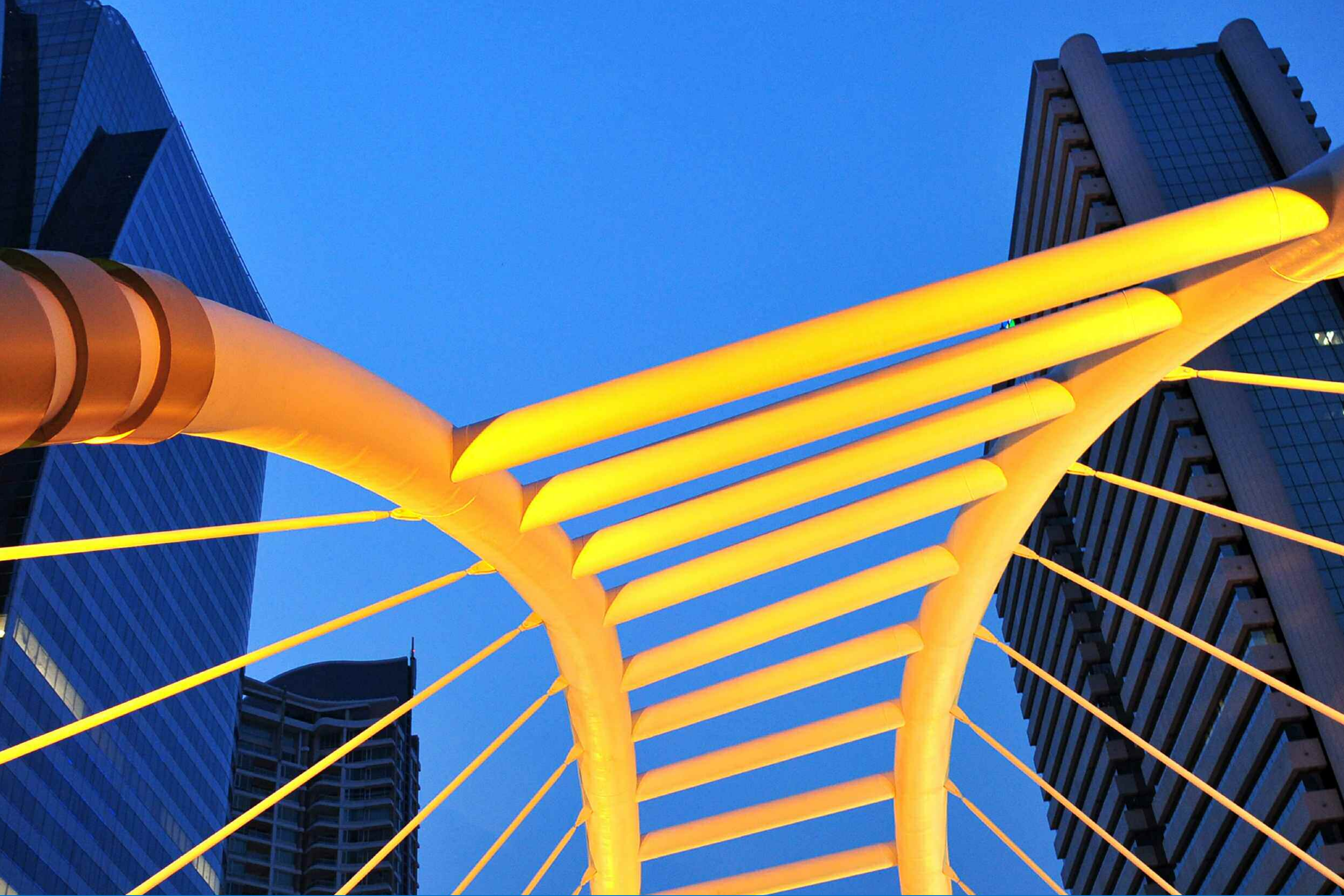

CLIFFORD CHANCE

Thailand: Essential tips for successful investment

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With its operational stability, well-developed infrastructure, skilled workforce, low production costs and the incentives offered for foreign investment, Thailand continues to attract foreign investment.

It is a significant hub for corporate activities in South East Asia and is a production base for exports to Asia and the rest of the world. Key sectors include automotive, metal processing, electrical appliances and electronics.

Here are our top legal tips for successfully investing in Thailand.

Relationships are key

As with most other Asian countries, establishing and maintaining relationships is at the heart of doing business in Thailand. Decisions made by Thai partners can be influenced by the strength of relationships. It is therefore important to invest the time and effort to build up trust and a rapport with your proposed Thai partner.

Importance of due diligence

You should conduct a comprehensive due diligence exercise to understand and evaluate the risks associated with the target and/or your proposed Thai partner. You should also be mindful of the history of your proposed Thai partner's other joint venture relationships, which could provide a useful insight into the way in which it does business.

Foreign investment restrictions

Shares

Under the Foreign Business Act, there are restrictions on foreign individuals and corporations, as well as foreign majority-owned companies incorporated in Thailand, carrying out certain business activities. These restricted activities include the media, transport, agriculture, mining, construction, wholesaling, retailing and most types of service businesses. There are certain exemptions for businesses (a) qualified under a treaty; (b) that obtain investment promotion privileges from the Board of Investment, a government agency established to promote foreign investment in Thailand; or (c) located on formally designated industrial estates operated by the Industrial Estates Authority of Thailand. Further, some activities may be carried out upon obtaining a foreign business license from the Ministry of Commerce.

Minimum capital requirements imposed by the Ministry of Commerce also apply in relation to a foreign majority-owned company incorporated in Thailand, which differ depending on the size of business activities of the company.

Real property

Under the Land Code, foreign individuals, corporations and foreign majority-owned companies incorporated in Thailand are, subject to certain exceptions, prohibited from owning land in Thailand. Land ownership by foreign investors may be permitted as part of the foreign investment promotion privileges if the foreign investors meet the investment promotion criteria prescribed by the Board of Investment or if the land is located in the designated area of the Industrial Estates Authority of Thailand.

Regulated industries

Apart from the Foreign Business Act, there are also foreign ownership restrictions, approval requirements and reporting obligations applicable to foreign investment in specially regulated businesses (notably the telecommunications, commercial banking, finance and insurance sectors) which are subject to special legislation and supervised by regulatory authorities for that sector.

Joint venture arrangements

Most decisions of a Thai company require the approval of only a simple majority of shareholders, so a majority shareholding is normally sufficient for effective control of a company. However, there are some decisions which require the approval of 75% of shareholders, such as changes to the company's memorandum and articles of association, an increase or reduction in share capital or the winding up of the company. You should bear the relevant shareholder approval thresholds in mind when determining the size of your investment.

Minority protection rights (eg reserved matters) are common in joint venture agreements and articles of association, and are enforceable under Thai law.

Public company issues

An acquisition which results in an acquirer holding (directly or indirectly and together with its related parties and parties acting in concert with it) 25%, 50% or 75% or more of the total voting rights attached to the shares in a listed company will trigger a mandatory offer. There are circumstances in which a mandatory offer may not be triggered or an acquirer may be able to apply for a mandatory offer waiver from the Securities and Exchange Commission. You should discuss with your advisers whether any of these circumstances may be applicable or exemptions might be available.

In addition, there is no statutory provision allowing a buyer to undertake a compulsory acquisition or minority squeeze-out. This can pose particular difficulties as there may be hundreds of shareholders holding small parcels of shares who simply are not aware of or do not respond to an offer. You should be aware of the risk that you may not be able to acquire the entire shareholding of a company and if, you wish to do so, you should consult your advisers on the options available under Thai law.

Resident directors / Thai national directors

A public limited company in Thailand is managed by its board of directors. The number of directors must be at least five, of which a majority must be residents of Thailand.

A private limited company must have a minimum of one director. There are no residency requirements for directors of private limited companies in Thailand although, as a practical matter, it may be necessary for at least one director to reside in Thailand to manage the operations of the company.

Companies carrying out certain regulated business activities may also be subject to additional requirements relating to directors' residency and nationality.

Merger control

The Fair Trade & Competition Act (1999) established a regime under which prior approval from the Trade Competition Commission, the national competition authority, is required for any integration of two or more businesses that would result in a monopoly or give rise to unfair competition in any market for goods or services in Thailand. However, this merger approval requirement is not yet in force as the implementing regulations have not yet been issued and no guidance has been given as to when they will be. Thailand therefore does not currently have a general operative merger control regime. There are specific regimes for certain regulated industries, for example, power generation, broadcasting and telecommunications. However, you will need to seek advice on whether the merger control regimes of any other jurisdictions are triggered by your transaction.

Employment

There are no statutory requirements for consultation with unions or work councils concerning acquisitions, disposals or mergers. However, employees of an entity whose business is discontinued on its sale have certain statutory rights against the buyer and prior consultation concerning acquisitions, disposals or mergers is a common contractual requirement in collective agreements with recognised trade unions.

Bribery and corruption

Thailand ranks 85 out of 174 in the 2014 corruption perception index, an increase in its ranking of 102 in 2013. It is therefore advisable that you take the time to understand the local practices of the target and/or your Thai partner, and review anti-corruption and sanctions compliance programs, or establish them if none exist.

Enforcement

Foreign court judgments cannot be directly enforced in Thailand, with the consequence that the relevant dispute would have to be adjudicated by the Thai courts and the judgement of the Thai courts enforced through a specific process.

On the other hand, Thailand is party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, so a foreign arbitral award from a jurisdiction which is also party to the New York Convention should, provided it does not offend public order and morality and meets certain specified requirements, be recognised in Thailand. Accordingly, if you enter into a commercial arrangement where any dispute is to be resolved outside Thailand, it may be preferable to choose internationally recognised arbitration over court proceedings.

C L I F F O R D
C H A N C E

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The ASEAN Economic Community

The ASEAN Economic Blueprint was adopted in November 2007 as the master plan guiding the establishment of the ASEAN Economic Community (AEC) by December 2015. The intention is to transform the region into an EU-style economic area that will increase cross-border trade and investment as well as the flow of capital and the movement of skilled labour. In 2013, ASEAN attracted USD122 billion, accounting for 8% of the global Foreign Direct Investment (FDI). This includes increasing investments from ASEAN Members States, which at 17% of the total FDI inflows, is now the third largest source of FDI in the region. As we move closer to the December 2015 milestone, we expect business interest in the AEC to continue to rise, as more businesses benefit from such ASEAN integration efforts.

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