JAPAN OUTBOUND INVESTMENT GUIDE
CO-PUBLISHED ARTICLE

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Legal overview for Japanese investment in Thailand

Thailand maintains its position as a popular destination for foreign investment, with a stable economy, favourable investment climate and strategic location in Southeast Asia. In 2022, foreign investment increased by 56% to THB129 billion (USD3.75 billion).

Japan is the leading foreign investor, with 151 investors (or 26% of overall foreign investors) investing a total amount of THB39.5 billion (USD1.15 billion). For Japanese investors, Thailand offers a range of investment opportunities across various sectors, from manufacturing and electronics to tourism and renewable energy.

This article provides an in-depth guide to investing in Thailand for Japanese outbound investors, discussing the legal and regulatory framework governing foreign investment, industries and sectors offering the most promising investment opportunities, and investment strategies and structures that are most effective in the Thai market.

Either for a seasoned investor or newcomer to the Thai market, this article provides necessary insights and knowledge to make informed investment decisions and maximise chances of success.

LEGAL, REGULATORY FRAMEWORK

Foreign investors need to seek advice on Thailand's legal and regulatory framework prior to investing, for there are various available investment structures to be considered, from branches of overseas parents to subsidiaries and unincorporated joint ventures, which are popular for construction or fixed-term projects.

Each structure has its own advantages and disadvantages, and it is important to carefully consider specific needs and goals of the investment before deciding on a structure.

The country has a range of laws and regulations that govern foreign greenfield investment, including the Foreign Business Act and Investment Promotion Act. In this regard, understanding the legal and regulatory framework is crucial. Only by navigating these laws and regulations carefully can foreign investors unlock the full potential of the economy and maximise chances of success.

The Foreign Business Act is the primary law regulating foreign investment. It sets out the rules and procedures for foreign businesses and defines the types of businesses that are restricted or prohibited from foreign ownership.

Under the act, foreign ownership is restricted or prohibited in certain sectors such as banking, telecommunications and media. However, foreign investors may be allowed to invest in these sectors through incorporated joint ventures with Thai investors, or by obtaining special permission from relevant government agencies.

The Foreign Business Act also governs the establishment of foreign representative and regional offices. While these procedures are optional, they can be beneficial for limited non-trading activities such as market surveys, quality control work, and searching for Thai products to be exported.

However, if a foreign company engages in such activities, it is required to obtain a Foreign Business Licence from the Department of Business Development, Ministry of Commerce. This process typically takes around three months and, if approved, the company will be entitled to receive up to two visas and work permits for a representative office and five for a regional office for its expatriate managers. Foreign banks, securities companies and finance companies may establish representative offices under separate regulations.

The Foreign Business Licence allows foreigners to own 100% of a company incorporated under Thai law, and is required for all foreign-owned businesses operating in Thailand, except for those exempt under the Foreign Business Act or the Investment Promotion Act. The application process for the Foreign Business Licence requires detailed information about the proposed business activities and shareholding structure. The key to successfully obtaining the licence is to show transfer of knowledge and technology to Thai people, including local hiring.

Once the Foreign Business Licence is obtained, the next step is to register the business with the Department of Business Development and obtain a company registration number. Foreign-owned companies must also obtain various licenses and permits such as tax identification numbers, value-added tax registration, and work permits for foreign employees.

The Investment Promotion Act is another key piece of legislation that encourages and regulates foreign investment. The act provides various incentives to foreign investors such as tax holidays, exemptions on import duties, and permission to own land. The incentives offered by the act are intended to attract foreign investment to certain targeted industries and regions.

KEY CONSIDERATIONS

When establishing a business in Thailand, there are several factors to consider, including non-tax and tax considerations.

From a non-tax perspective, it may be advantageous to form a Thai limited company instead of a branch of a foreign corporation, as the former allows for more flexibility in terms of ownership and may be easier to obtain registrations and licences. When dealing with the Thai government, it is also generally advantageous to be a company incorporated in the country, as this may lead to the granting of certain privileges and permissions.

On the tax front, all companies incorporated under Thai law or incorporated under foreign law and carrying out business in the country are subject to corporate income tax on net profit. However, net profits of branches operating business abroad will be subject to corporate income tax if the head office is incorporated under Thai Law. The activities of representative offices and regional offices may not incur a corporate income tax liability if they are limited to some specific activity.

Dividends paid to foreign parent companies or shareholders are subject to a withholding tax, which may be exempted under the Investment Promotion Act. The remittance of profits by a branch to the head office is also subject to a withholding tax.

Interest, fees and other amounts remitted to foreign corporate shareholders are subject to a withholding tax, but payments of such amounts by a branch to its head office may be treated as a taxable remittance of profit.

Foreign tax credits may be available in some cases. Also, double taxation may be eliminated with the methods specified in the Avoidance of Double Taxation Agreements between Thailand and relevant countries, namely underlying tax credit and tax sparing credit. It is recommended to consult with tax counsel to determine the availability of double taxation elimination agreements and impact of any applicable treaties.

BUSINESS OPPORTUNITIES

The Japan-Thailand Economic Partnership Agreement (JTEPA), a bilateral free trade agreement signed in 2007 to strengthen economic ties between Japan and Thailand, offers various benefits for Japanese investors. These include reduced tariffs on goods and services, streamlined customs procedures, and protection for IP rights.

Considering that most manufacturing businesses are not on the restricted list and can be 100% Japanese-owned, the manufacturing sector consequently offers attractive investment opportunities for Japanese investors.

Thailand offers a skilled workforce, strategic location in Southeast Asia, and a favourable investment climate. It has a well-established manufacturing industry, with a strong focus on food processing, electronics and automotive.

Historically, Japanese companies have been among the largest investors in Thailand's manufacturing sector, with a particular focus on automotive production and assembly.

In addition, the Industrial Estate Authority Act also provides the benefit of allowing foreign investors to own land provided that certain conditions are met.

Another sector that offers significant potential for Japanese investors is renewable energy. Thailand has set ambitious targets for renewable energy development, aiming to increase its share in the total energy mix to 30% by 2037.

The country offers a range of incentives for renewable energy development, including tax incentives, feed-in tariffs and soft loans. Japanese companies have already made significant investment in the sector with projects in solar, wind and biomass energy.

Tourism-related businesses also offer potential investment opportunities for Japanese investors. The tourism industry accounts for a significant share of GDP, and Japan is one of the top sources of foreign tourists with millions of visitors annually.

Several Japanese companies have invested in the tourism sector, subject to the Foreign Business Act, with projects in hotel and resort development, entertainment and leisure. In the past few years and with more strength after the pandemic, the Thai government has launched various initiatives to promote tourism worldwide, such as the "Amazing Thailand" campaign, aiming to boost the number of international visitors.

CONCLUSION

Due to its strategic location, skilled workforce and business-friendly environment, Thailand offers a promising investment destination for Japanese outbound investors. However, investing in the country requires a thorough understanding of the legal and regulatory framework, as well as the cultural nuances of doing business.

It is important for Japanese investors to work with experienced legal counsel and seek out professional advice to maximise their chances of success in Thailand. By carefully evaluating potential investment opportunities, negotiating contracts effectively, understanding cultural differences, and selecting the appropriate investment structure, Japanese investors can successfully navigate the Thai market and realise significant returns.