

Investment Promotion for 10 Targeted Industries and Infrastructure Projects in the Eastern Economic Corridor of Thailand

1. Overview

The Eastern Economic Corridor (**EEC**) covers an area of 3 provinces in the eastern region of Thailand. The 3 provinces are Chachoengsao, Chonburi and Rayong. The EEC is established by laws passed in 2017 and 2018 to promote investments in 10 specially targeted industries, which are the next-generation automotive, smart electronics, affluent and wellness tourism, agriculture and biotechnology, food for the future, robotics, aviation and logistics, biofuels and bio-chemicals, digital and medical hub.

A lot of infrastructure projects have been approved for the EEC. These include the 220 kms high speed train project connecting Donmeung Airport, Suvarnabhumi Airport and U-Tapao Airport in Rayong, and the expansions of the Map Thaput Deep-Sea Port and the Laem Chabang Sea Port and other 168 infrastructure development projects worth US\$31.5 billion.

This article discusses some major provisions of the laws on the EEC, the investment promotion and the public-private partnership mainly in or related to the EEC area.

2. The Eastern Economic Corridor Act B.E. 2561 (EEC Act) and the EEC Objectives

The EEC Act was enacted by the National Legislative Assembly (**NLA**). It was published in the Government Gazette on 14th May 2018 and came into force on 15th May 2018. Before the EEC Act, the National Committee for Peace and Order (**NCPO**) issued its Order No. 2/2017 to establish the EEC and the EEC Policy Committee. As of 7th May 2018, the EEC Policy Committee issued 24 notifications to implement the EEC.

The EEC Act sets out the general requirements and procedures for promoting, facilitating and granting certain special privileges to businesses in the EEC area. It aims at development and enhancement of the economy and competitiveness of Thailand by way of:-

- developing the economic activities which are environmental friendly to enhance the competitiveness of Thailand;
- providing the one-stop service from the government sector to reduce business obstacles and costs of doing business;
- developing basic, effective and continued public utilities accessible to all and completely connected;

- specifying types of land use in compliance with the principle of sustainable development; and
- developing cities to be internationally modern, convenient, safe and widely accessible.

3. EEC Policy Committee, EEC Office, EEC BluePrint

The EEC Policy Committee is chaired by the Prime Minister. The EEC Office (**EECO**) operates as the secretariat of the EEC Policy Committee in implementing the EEC Act.

The EECO is required to prepare an EEC Development Master Plan, a land use plan, an infrastructure development plan, a project plan and a government service plan for the EEC Policy Committee to approve and then the EECO and other relevant government offices must prepare a detailed land use plan and a detailed infrastructure development plan within 1 year after the EEC Development Master Plan is approved by the EEC Policy Committee. These approved detailed plans will replace the current city plans of the cities located in the EEC area and they will be used as models of new city plans of the cities in the EEC area.

The powers of different authorities to approve applications and grant permits and licenses under the building control law, the factory law and several other existing laws in relation to the EEC are transferred to the EEC Policy Committee.

4. Special Economic Promotion Zones (SEPZ)

The EEC Policy Committee has power to designate several SEPZs to promote investment in the 10 specially targeted industries. The economic promotion zones previously approved under the NCPO notifications issued prior to the EEC Act are recognized as SEPZs under the EEC Act. As of September 2018, 24 SEPZs have been approved for the EEC area.

5. Incentives Granted in SEPZ

The EEC Act provides several tax and non-tax incentives to business operators in the SEPZ including the followings:

- **Tax Exemption and Tax Reduction**

The EEC business operators are entitled to tax exemption or tax reduction up to the maximum rates under the investment promotion law and the law on enhancement of competitiveness for the targeted industries.

The EEC business operators may be granted the incentives available to the business operators in the free trade zones under the customs law, subject to approval of the EEC Policy Committee.

Exporters and importers in the SEPZ are exempted from compliance with the customs law in whole or in part.

- **Real Property Ownership and Long-Term Lease**

Foreign business operators can own land in the SEPZ for business operation or own a condominium for residential purposes. However, the foreign business operator must commence the approved business operation within a 3-year period from the land acquisition date, otherwise the granted land ownership must be disposed of within one year from the date of being notified by the EECO.

A lease or sublease of land and other immovable properties in the SEPZ can be for a period of 50 years plus a one-time renewal for not more than 49 years.

- **Visa and Work Permit**

Business operators are allowed to bring into Thailand skilled labors, executives and specialists to work in the SEPZ, including their spouses, children and dependents. They will be granted tax reduction, smart visa, work permit and other rights by the Secretary General of the EECO.

- **Other Incentives**

Business operators are exempted from compliance with the exchange control law in whole or in part.

Foreign currencies can be used for payment of goods and services within the SEPZ subject to the conditions imposed by the EEC Policy Committee.

Licensed foreign professionals can practice in the SEPZ subject to the requirements and conditions to be imposed by the EEC Policy Committee.

Other rights and privileges under the investment promotion law and the law on enhancement of competitiveness for the targeted industries will also be granted by the EEC Policy Committee on a case-by-case basis.

6. Applications for EEC Approval

Investors who want to invest and operate in the EEC area can apply for approval directly with the EECO or through the Board of Investment (BOI).

7. Investment Promotion Act

Thailand also promotes investments by granting tax and non-tax incentives to investors who are manufacturers and service providers of the promotion eligible business activities under the Investment Promotion Act B.E. 2520 as amended (**IPA**).

The BOI established under the IPA is in charge of providing incentives for investments. The BOI is chaired by the Prime Minister. The economic ministers, senior civil servants, representatives of major private sector organizations and academics serve as the BOI members and advisors. The BOI Office and the Prime Minister Office support the BOI in implementing the IPA.

8. BOI Tax Incentives

BOI promoted projects in or outside the EEC area are granted

- exemption of the corporate income tax for 3 years to 8 years;
- exemption of the import duties on imported machinery, imported raw or essential materials;
- deduction of the corporate income tax for a maximum period of 5 years after the end of the corporate income tax exemption period if the promoted projects are located in the SPEZ;
- exemption of the withholding tax on income from the goodwill, royalties or fees remitted abroad for 5 years;
- exemption of the withholding tax on dividends distributed from profits during the corporate income tax exemption period and such dividends can be paid within six months after the end of the tax exemption period.

9. BOI Non-Tax Incentives

BOI promoted projects in or outside the EEC area can

- bring foreign nationals to undertake investment feasibility studies;
- bring foreign technicians and experts to work under the promoted project;
- own land for the promoted project;
- own land for use as (a) offices of the promoted project (up to five rai), (b) as residence of executives or experts (up to 10 rai) and (c) as residence of workers (up to 20 rai).
- Foreign experts, executives, entrepreneurs and investors who work for or invest in promoted companies doing business in the 10 specially targeted industries can obtain a smart visa (working

visa) and work in Thailand without a work permit.

10. BOI Promotion Eligible Activities

The BOI issued notifications to create a list of BOI promotion eligible activities. As of September 2018, the list covers 7 groups of investment activities.

11. What BOI Applicant Needs to Do after BOI Promotion Is Granted

- Accepting the grant within one month from receiving the promotion granting letter from the BOI.
- Filing a progress report within 6 months of accepting the promotion granting letter and submitting the application for issuance of a promotion certificate.
- Commencing the factory building construction and purchasing machinery within 6 months from the issuance date of the promotion certificate.
- Importing machinery and equipment within 30 months from the BOI promotion certificate issuance date.
- Filing a project progress report every 6 months from the BOI promotion certificate issuance date.
- Completing the project construction within 36 months from the BOI promotion certificate issuance date.
- Filing a report on the operation result by 31st July each year.
- Obtaining BOI permission for each mortgage, sale, transfer or rent of the imported machinery exempted from the import duties.

12. Public Private Partnership Law

Thailand has a law on public-private partnership (**PPP**) called the Public and Private Sector Joint Ventures in State Undertakings Act B.E. 2556 (**PPP Act**). Private investors can participate in State infrastructure projects. Under the PPP Act, the State infrastructure projects are carried out mainly as Joint Ventures in State Undertakings.

The “State Undertakings” are the activities under the authorities and functions of government divisions, state enterprises, other state agencies or local government offices and the activities that require natural resources or properties of government divisions, state enterprises, other state

agencies or local government offices.

The “Joint Ventures” are joint investments by the State and the private sector by any means or investments in which the private sector investing alone with the State granting permission, concession or right in any form, except for petroleum and mineral concessions.

13. Strategic Plan and PPP Project Values

The PPP Policy Committee is established under the PPP Act. It is chaired by the Prime Minister. In 2015 the PPP Policy Committee approved the 2015-2019 PPP Strategic Plan prepared by the State Enterprise Policy Office (**SEPO**) covering 66 PPP projects with the value of THB1.66 trillion. 33 of these projects are under the Ministry of Transport with the value of THB1.53 trillion (91.54% of the total value of the 66 projects).

- The PPP Act and its implementing regulations categorize the PPP projects into 3 categories based on their values:
- large project with a value of THB5 billion or more
- medium-sized project with a value of THB1 billion up but less than THB5 billion
- small project with a value of less than THB1 billion.

14. PPP Steps

For the large project, the major steps for its preparation, approvals and selection of the private investor are as follows:

- **Preparing and Approving Project**

The project-owning state agency (**Agency**) conducts a feasibility study of the project and submits the project with the result of its feasibility study to the Minister in charge of the Agency (**Responsible Minister**), the SEPO and the PPP Policy Committee for their approvals respectively. If the project requires a government budget or a loan guaranteed by the Ministry of Finance, it must also be approved by the Cabinet.

- **Preparing and Approving the TOR and Inviting the Private Sector**

After the project is approved by the PPP Policy Committee, the Agency then prepares a draft TOR of the project and a draft joint venture agreement, appoints a selection committee to work with the Agency on the selection method and the terms and conditions for selecting the private investor for the project. The selection method must be a bidding method (a non-bidding method

is possible but it must also be approved by the SEPO and the PPP Policy Committee). The Agency and the selection committee then invite private investors to submit bids for the project.

- **Selecting the Private Sector and Negotiating Terms of Agreement**

After a winning bidder is selected, the Agency and the selection committee must negotiate the joint venture agreement with the winner and then submit a selection report to the SEPO for its approval and send the joint venture agreement to the Supreme Public Prosecutor for his review before they are finally approved by the Responsible Minister and the Cabinet respectively.

- **Entering into the Joint Venture Agreement**

Once the report and the joint venture agreement are approved, the Agency can then sign the agreement with the selected private investor.

15. PPP Timeframe

Typically a large PPP project took around 19-25 months to complete Step 1 and Step 2 discussed above. However, in 2017 the Cabinet implemented the PPP Fast Track scheme to shorten Step 1 and Step 2 to around 9 months by requiring all the necessary actions in these 2 steps to commence at the same time.

On 3rd August 2018, the Directorate of Investment and Company Administration (“**DICA**”) issued the Announcement on Anti-Corruption Code of Ethics (“**ACCE**”) for entering into business deals with the government authorities and other companies and organizations in the private sector in order to develop the entire economic environment.

All companies and corporations established under the existing laws in the Union must comply with the ACCE.

The following activities are prohibited either directly or indirectly in order to prevent the corruption while doing business in Myanmar:-

- (1) making and offering a gift, entertainment, and other preferential treatments;
- (2) providing a necessary assistance for traveling;
- (3) providing a financial support for having a business opportunity;
- (4) offering a charitable donation;
- (5) conferring a political contribution; or

(6) providing an assistance for appointment of employees in companies or corporations for personal interest.



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