Intervista a Piyanuj Ratprasatporn,

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What's your opinion about FDI overall value and trend in Thailand in the last decade compared to neighborhood countries?

FDI inflows dramatically increased following the 1997 Asian Economic Crisis and ensuing depreciation of the Baht. In the immediate post-Crisis period, Thailand saw a huge increase in mergers and acquisitions (M&A) as foreign companies bought up local companies faced with large amounts of debt. Since 2000, the trend in M&A activities shifted away from foreign companies directly buying local companies; instead, M&A transactions taking place overseas have affected Thailand on a more indirect level, with large multinational corporations selling non-core businesses to other multinational corporations, as in many cases, these selling companies have subsidiaries or affiliates in Thailand which will be taken over by the buying company. Thailand's other main source of FDI is currently seen in the form of direct foreign ventures in manufacturing, export, and various service activities such as regional operating headquarters, recycling, energy saving, and tourism.

In terms of Asian countries, China is the dominant force with regard to manufacturing, and most firms seeking to establish business operations in Asia tend to focus on China and/or India. Thailand ranks lower on the list of places to invest, while most other Southeast Asian countries are ranked even lower. China and India both have large domestic markets, but the majority of Chinese and Indian consumers do not have the funds to purchase Western products. With a population of about 66 million, Thailand is a much smaller market, but it has been quite aggressive in terms of pursuing Free Trade Agreements (FTAs).

Why an Italian or European Country should invest in Thailand?

Despite the fact that no special incentives are granted to Italian or other European countries, Thailand affords many benefits to foreign investors such as fewer procedures to start up a business, and low costs of both doing business and living. The World Bank's *Global Competitiveness 2009 Report* ranked Thailand's macro-economy at 36th amongst the 133 countries surveyed. Thailand was also ranked 12th out of the 183 countries surveyed in the World Bank's *Doing Business 2010 Report* in terms of ease of doing business. When compared to China, India, Singapore, Malaysia, and Vietnam (Thailand's main competitors in Asia), starting a business in Thailand is considerably easier in terms of required procedures, duration, and cost. The establishment of a company can be completed within one day.

International trade is a major factor in Thailand's economic stability and growth, with exports of goods accounting for a significant percentage of Thailand's GDP at 57%. Although the country experienced a negative GDP growth rate of -2.3% in 2009 due to the global economic crisis (as did many other countries), the Thai economy is expected to

rebound this year thanks to the high demand for Thai exports and increased government spending in local infrastructure. Q1 2010 has already shown a major improvement in Thailand's economy while the recent political unrest in Bangkok during Q2 resulted mainly in a hit to the county's tourism industry (which only comprises around 6% of GDP) and reduced consumer spending, leaving Thailand's export/manufacturing sector relatively unaffected.
In Thailand, corporate income taxes are quite low — ranging from 30% to 10% based on criteria such as profits, listing on the Stock Exchange of Thailand, and legal operating status. Under current policy, regional operating headquarters (ROH) are taxed at only 10%. The Thai government has also recently announced it is considering new tax incentives to qualified ROH whereby 0% corporate income tax would be applicable for fifteen years and personal income tax for expatriate employees working for ROH would be reduced to 15% for 8 years. (Ordinarily, personal income tax is charged at progressive rates ranging from 10% to 37%)
In addition, the Board of Investment (BOI) and the Industrial Estate Authority of Thailand (IEAT), offer numerous investment incentives, providing tax reductions and/or exemptions, depending on qualifications.
Other advantages investors may wish to consider are Thailand's continued steps in implementing legislation, such as the recent amendment to the Securities and Exchange Act (No. 4), to ensure transparency and protection for foreign investors vis-à-vis disclosure regulations with regard to ownership, financial performance, and business transactions. For example, all ownership changes and quarterly financial statements are now published on the Stock Exchange of Thailand's website for public viewing.
In addition, the cost for office space in Bangkok is relatively low when compared to other regional business hubs. Grade A office space in Bangkok's central business district costs approximately US$19.86/sq.m./month, which is less than Bangkok's closest competitor city Kula Lumpur at US$21.19. Rental rates for industrial space outside of Bangkok are also quite economical, which, when coupled with competitive electrical power and water costs, makes Thailand an attractive place to invest.

What's your consideration about the Thai government supporting the FDI? What do you think about the Board of Investment?

Although there have always existed certain laws and regulations to limit foreign ownership in specific activities, the Thai government has generally taken a positive approach towards FDI.
The fundamental law behind the Thai government's effort to promote inward FDI is the Investment Promotion Act 1977, under which the BOI is empowered to grant promotional privileges and cooperate with other relevant government agencies to grant permits for investments in promoted projects. BOI policy is continuously undergoing changes to better encourage inward flows of FDI, and maximize competitiveness and productivity in the Thai economy.
Foreign majority-ownership had previously been restricted by the BOI for promoted projects which involved natural resources, services and manufacturing in the local Thai market; but these restrictions have gradually been relaxed over the past decade.
By October 1997, the BOI had lifted the foreign ownership ceilings on most projects regardless of their location, except for a few businesses which for special reasons are reserved for Thais such as farming, land trading, newspaper publication, radio and television broadcasting, forestry, etc. More recent BOI policies, the 2000 revision for example, are placing a greater emphasis on decentralization of investment into regional areas divided into "zones." BOI policy is reviewed by the government on a regular basis, and in the future, specific industries will most likely be targeted for investment promotion.

What's your opinion about Thai legislation especially towards foreigners?

The Foreign Business Act (FBA), which was promulgated in 1999 to replace the obsolete Announcement of the National Executive Council No. 281 dated November 24, 1972, is the foremost law governing FDI in Thailand. Several professions such as law, accounting, advertising, and most types of construction have been placed on a less restrictive list of businesses in which Thais are not yet ready to compete.

The FBA also reduces the previous limits on foreign ownership in manufacturing of certain goods, e.g. cement, pharmaceuticals, alcohol, textiles, garments, and footwear. Previous restrictions on retail and wholesale business have also been relaxed whereby foreign companies with a minimum capital of THB 100 million can now engage in retail or wholesale business with no special government approval. However, concerns over the impact of large foreign discount stores on local retail outlets has resulted in pressure on recent governments to draft specific legislation regarding retail and whole activities.

Which norms would you think should be changed in order to make easier investing in Thailand?

Since the FBA's promulgation in 1999, the Thai government has neglected to review the piece of legislation. It is, therefore, suggested that the government annually review certain businesses which are reserved under the FBA. Restrictions on certain services and other activities in which Thais already possess skill and are competent enough to compete with foreigners should be relaxed to promote competition and allow foreign companies to establish operations in Thailand.

Businesses in which Thailand does not have sufficient knowledge, technological know-how, etc., should also be liberalized, so that high-caliber foreign companies can enter the local market, on the condition that training is provided and knowledge transferred to their Thai employees.

Without such, it may be impossible for Thais to acquire this knowledge as most Thai companies and nationals have limited budgets, and Thailand itself has historically shown little interest in innovation and R&D.

Do you believe the European countries would have more influence in the near future?

Given the current economic situation in Europe, this would be difficult to speculate. The US economic crisis showed the international community that economic policy heavily reliant on the US economy could lead to problems. It is likely EU member states' increased economic influence will depend on whether such countries can draw from their existing potential, such as natural resources, human resources, etc., to compete with US and Chinese economic interests. The addition of the Thailand-EU FTA (if and when enacted) could also help spur European countries' investment in Thailand, as could the advancement of industry specific trading policies.

Up to now the Italian FDI is not very strong: do you know why? Do you think in the future this situation will change?

The lack of Italian FDI mainly stems from Thailand's international economic policy, which focuses primarily on investment promotion for the US and other Asian countries. European countries lack proper incentives to invest in Thailand. This, along with the recent Thai political turmoil, has caused foreign investors to become more apprehensive about investing in Thailand. However, Thailand remains attractive for investment due to its rich natural resources and relatively low-cost skilled labor when compared to other countries in Southeast Asia. It is expected that once the US economy stabilizes, the Thai government's economic policy will shift focus to encourage investment from other countries besides the US. This may come in the form of FTAs, such as the much-talked-about Thailand-EU FTA, or tax benefits, which could lead to increased investment by European countries (including Italy) in Thailand.

Piyanuj (Lui) Ratprasatporn is a Partner and Director of the Corporate and Commercial Department of Tilleke & Gibbins in Bangkok. She is consistently identified as a leading lawyer in the Corporate, Foreign Investment, Mergers & Acquisitions, and Immigration areas. She graduated with honors from Thammasat University with a Bachelor of Laws, obtained her master's degree from the Washington College of Law, The American University, and completed the Program of Instruction for Lawyers at Harvard University.
Lui was nominated as one of the leading lawyers in the Corporate Immigration area in the International Who's Who Legal Series 2001, 2002, and 2003. She was also listed in The Asia Pacific Legal 500 as a leading individual in the area of Corporate/M&A in Thailand, 2002-2009. She is an active member of many professional and business associations, including being the Chairperson for the Asia Pacific Region of Multilaw; Regional Vice Chair, Asia Pacific, Immigration Practice Group of Lex Mundi; Tilleke & Gibbins' representative to World Services Group; a Board member of the Thai-Norwegian Chamber of Commerce; and a member of the Thai Institute of Directors.

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