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DEVELOPMENTS ON THE THAI EXECUTIVE MARKET

"GERMAN PRODUCTS ENJOY EXCELLENT REPUTATION"

Dr. Roland Wein
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What role does Thailand play today for the German economy?

Diplomatic relations between Germany and Thailand were established in 1862 with the signing of the Friendship, Trade and Shipping Treaty. Since then, bilateral relations have been characterized by continuous mutual expansion.

Today, around 600 German companies are present in Thailand with their own branches. The majority of these companies are active in the manufacturing sector, but also a number of service providers have established themselves in Thailand.

The most important trading partners for Thailand are ASEAN, China, Japan and the USA. Germany, as the most important trading partner in the EU, plays a special role in the fields of machinery and medical technology as well as in the automotive industry, but increasingly also in "green technologies".

German exports to Thailand totaled around EUR 4.41bn in 2016, while German imports from Thailand amounted to EUR 5.36bn. Thailand ranked 42nd in terms of exports and 33rd. in terms of imports.

For the period January-July 2017, another positive trend is emerging. German exports to Thailand increased by 6.7% compared to the same period of the previous year, to EUR 2.71 bn. German imports from Thailand even grew by even 11.3% year-on-year, to reach EUR 3.43bn.

What makes Thailand attractive for direct investment, which industries are well represented?

One of the strengths of the liberal market-oriented Kingdom as an investment location is its industrial base in numerous sectors, such as automotive and electrical engineering. Another asset is the well-developed infrastructure as the basis of a modern industrial and service economy.

Thailand is intensifying the promotion of foreign direct investment. Enhanced investment incentives will be available for knowledge transfer projects, with particular focus on biotechnology, nano and digital technology, and advanced materials.

The new Board of Investment (BOI) tool is called BOI Plus, based on the recent National Competitiveness Enhancement Act for Targeted Industries. Technology-based incentives are part of the overall concept of the long-term development strategy "Thailand 4.0", which aims to free the country from the "Middle Income Trap" in the long term.

The Kingdom is using new strategic approaches to modernize the Thai economy. The focus is on ten clusters that are being expanded or redeveloped thanks to sophisticated structures.

Expandable clusters with high export potential include agriculture and biotechnology, smart electronics, health and wellness tourism, food processing and next-generation cars. For the newly developed clusters with future potential, the choice fell on robots, biofuels and biochemistry, aviation industry, digital technology and the development into a regional medical hub.

The leading high-tech industrial region, with a focus on the ten new target industries, is the Eastern Economic Corridor (EEC) with the three provinces of Chon Buri, Rayong and Chachoengsao.

Investments in high-speed trains, double-track rail lines and the expansion/modernization of the Bangkok-Pattaya-Rayong motorway connection shall be pursued. In addition, the U-Tapao airport is to be developed into an international hub and center for aircraft maintenance and repair, and the "Laem Chabang Port" and "Map Ta Phut Port" are to be expanded.

The new investment framework conditions focus on future technologies and shall position Thailand as a regional hub. Investments and announcements of further investment projects were made in 2016 and 2017 by companies from Germany and other countries.

Schaeffler (inauguration of the new production facility in Chon Buri, October 2016), STAEDTLER (inauguration of expanded facility, February 2017), Bosch (opening of the new plant in the Hemaraj Eastern Seaboard industrial area in Rayong, December 2017) and Continental (announcement of a new tire plant in Rayong, January 2017).

The AHK mainly supports SME's in setting up branches in Thailand, which often also fulfill coordination functions, promoting business throughout ASEAN.

For which sectors is the Thai market particularly interesting?

German products enjoy an excellent reputation in Thailand for their quality and value. This can also justify a higher price. An essential aspect of being successful in the Thai market is customer service. Overall, it can be stated that the bilateral trade relations between Germany and Thailand still have untapped potential.

As an example, the machine tool industry can be mentioned here. As the demand for quality rises on the Thai market, German producers see growing potential for a market entry.

German OEMs and suppliers from the automotive industry are expanding their existing production facilities and setting up new factories.

Furthermore, the regional integration in the Asean Economic Community (AEC) promises positive impulses and thus additional potential as a production hub in several core industries.

In general, the strongest import demand is concentrated on the automotive and metalworking industries as well as energy, agroindustry, food, packaging, electronics and electrical engineering. Among the major future industries of the future is the aircraft sector, which has already attracted some foreign investors.

In Thailand's import of machinery and parts in 2016, Germany advanced to third place. The main supplier countries in 2016 were Japan (30.9%), China (22.8%), Germany (7.1%), the USA (6.8%), the United Kingdom (3.4%), Rep. Korea (3.4%), Taiwan (3.2%) and Malaysia (2.8%).

What development do you expect next year for German-Thai economic relations?

We continue to expect a dynamic development in bilateral economic and trade relations. Thailand's economy has been regaining momentum for some time, which has had a positive impact on German companies. Thailand's expected economic growth for 2018 has recently been revised up to 3.8%.

We are optimistic that the promotion of the EEC and the corresponding investment incentives will continue to attract German investment in the coming years, also in connection with the construction of new local production facilities.

We are working for the negotiations between Thailand and the EU on a free trade agreement to be reinstated, at least on a technical level. The negotiations have been suspended since the seizure of power by the military.

Equally important would be the resumption of ministerial-level contacts between EU countries and Thailand. Dialogue is necessary, especially at official government level, to flank the interests of the German economy in Thailand.

According to the EU, negotiations can only be concluded with a democratically elected government in Thailand. According to current information, elections in Thailand should take place at the end of 2018, which would open the way for the transfer of power to a civilian government.

"COMPANIES SHOULD PRODUCE IN THAILAND"

Andreas C. Richter
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What are the restrictions for foreign companies wishing to sell consumer goods or capital goods in Thailand? How can sales activities be structured?

If a foreign company does not want to sell its products exclusively through a local distributor in Thailand, the direct business engagement of foreign companies in Thailand is regulated by the so-called „Foreign Business Act".

With the exception of production, most business activities are then limited and require official approval. This approval is available in the form of a Foreign Business License or by way of investment promotion by the Thailand Board of Investment. The foreign company, however, must establish a local subsidiary, whose shares can then be held entirely by foreign shareholders.

An exception applies to foreign-held trading companies established in Thailand with a registered and fully paid-up capital of at least THB 100 million (approx. 2.5 million euro).

With a paid-in capital stock of that amount the company is exempted from the restrictions of the Foreign Business Act and can immediately engage in either retail sales or wholesale without the requirement of a Foreign Business License. Retail sales is defined as sales to end customers, whereas wholesale is deemed a sale to intermediaries or to customers using the products sold in their production or further processing.

However, a capital stock as high as 2.5 million euro does not make sense for most companies, so an application for a Foreign Business License is the usual way to establish a trading company in Thailand. A Foreign Business License is relatively easy to obtain for wholesale businesses. If the products to be sold are machines, technical equipment and related service, the Thailand Board of Investment can even promote these activities.

In the retail sector, a Foreign Business License is only available if the applicant intends to sell products manufactured within the company's own group.

If all these regulations seem too complex, a local joint venture with a Thai majority partner can be established. However, joint venture companies in Thailand are now the exception, especially with regard to the liberalization of market access requirements for foreign companies, as well as the approval practices of the authorities in connection with the granting of a Foreign Business License.

What aspects of employment law do companies have to consider in Thailand?

As in many other countries, employment law and the legal practice of the courts are mainly concerned with the protection of employees. Thai employees are now aware of this and their (supposed) rights.

There are usually no grounds for terminating an employment contract without notice, without the matter being litigated in labor court.

However, employment relationships can be terminated more easily, but only against payment of a corresponding compensation, the so called "severance payment", which is regulated by law, and depends on the length of service of the terminated worker.

The severance payment is between one and ten monthly salaries. Any further claims, such as an additional compensation for an unjustified termination, can be enforced before the employment court only under very narrow conditions.

The same applies to a claim for reinstatement, which is provided for by law but which I have never seen in almost 25 years of professional practice. Temporary employment contracts are unusual in Thailand, in particular because they do not protect the employer in principle against paying a compensation upon expiration of the contract term.

What regulations have to be observed when employing expatriates?

Foreigners pursuing a professional activity in Thailand require an employment visa, as well as a work permit. Both the issuance of the visa and the work permit are subject to certain conditions, in particular with regard to the capital stock and the number of local employees of the hiring Thai company.

Which activities comprise „employment" is not regulated by law. The employment and immigration authorities, however, already consider the signing of documents and the instructing of employees as a profession requiring formal authorization. Even foreign interns have to apply for a work permit.

Foreign nationals are also subject to the protection of Thai labor law with the aforementioned compensation rules in the event of termination.

The salary which the foreign employee receives for his work in Thailand from a Thai employer shall be taxed in Thailand, regardless of where the salary is paid. From a stay of more than 180 calendar days a year, depending on the applicable double taxation agreement, the employee is deemed to be tax resident in Thailand and then taxed with his/her world income in Thailand.

However, the Thai tax law contains a derogation that is often relevant in practice. According to this, the part of the world income that has been earned abroad is taxed only in Thailand if it is transferred to Thailand in the year when said income was generated.

This undoubtedly implies opportunities for tax optimization, especially if the expatriate holds a domestic and another foreign employment relationship, for instance with the German parent company.

To what extent do customs and certification regulations represent a barrier for companies wishing to export to Thailand?

Thailand has already matched its import tariffs more than ten years ago to the appropriate level under the GATT agreement.

However, like many other countries in the region, Thailand also tries to protect its local market and thus Thai producers from imported foreign goods.

This affects capital goods less than consumer goods - especially German machines are still very popular in the country. Thus, for a variety of products such as cosmetics, alcoholic beverages and electronic household appliances, there is a requirement for import licensing, product labelling and certification.

This may be one reason why Thailand regularly reports a surplus in its trading balance. Companies wanting to be competitive in the local and regional markets with their price structure should basically produce in Thailand.

ANALYSIS

DEVELOPMENTS ON THE THAI EXECUTIVE MARKET

Christian Tegethoff
Managing Director
CT Executive Search

The long-term economic upturn in Thailand and the establishment of the country as a production and distribution hub for Southeast Asia resulted in an increasing demand for executives.

Above all, companies from the consumer goods and automotive industries as well as machine building have gone to the Kingdom. While they were flocking into the country, international companies initially faced significant problems recruiting suitable managers on the ground.

The reason was a lack of local candidates qualified for working in multinational companies with their special requirements regarding compliance adherence and management's ability to work in complex matrix reporting structures. In former years, Thai candidates with a track record in purely local companies found it difficult to integrate themselves into international corporate structures.

Meanwhile, the situation has relaxed in this regard. While Thai managers with international exposure are still in demand, the foreign companies engaged in Thailand have trained a reasonable pool of local executives.

Additionally, there is now a considerable community of expatriate professionals in Bangkok which may be considered in dependence of the position to be filled.

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While expats are less popular in sales-related roles, companies still rely on them for administrative functions and managing knowledge transfer.

The "War for Talent" of past decades has been further mitigated by the more moderate economic growth over the last years and the somewhat declining influx of new players to the market.

However, high-class candidates continue to be sought after, especially in sales of capital and technical goods. Key skills required here are market knowledge and familiarity with international corporate standards.

Recruitment for management positions in production-related functions is still a demanding task – examples are roles in manufacturing, quality assurance and supply chain management. The availability of suitable candidates depends heavily on the location. While well-trained candidates are more readily available i production clusters like Chon Buri, recruitment for remote locations is complex and more time-consuming.

European companies are significantly less invested in Thailand than their Japanese, Chinese and Korean peers. At the same time, European companies are extremely popular as employers. Thai managers value their willingness to entrust local managers with senior positions, while the top ranks of Asian companies are usually filled with seconded employees from Japan or Korea.

Accordingly, European companies are considered attractive and are in a good position during recruitment negotiations.

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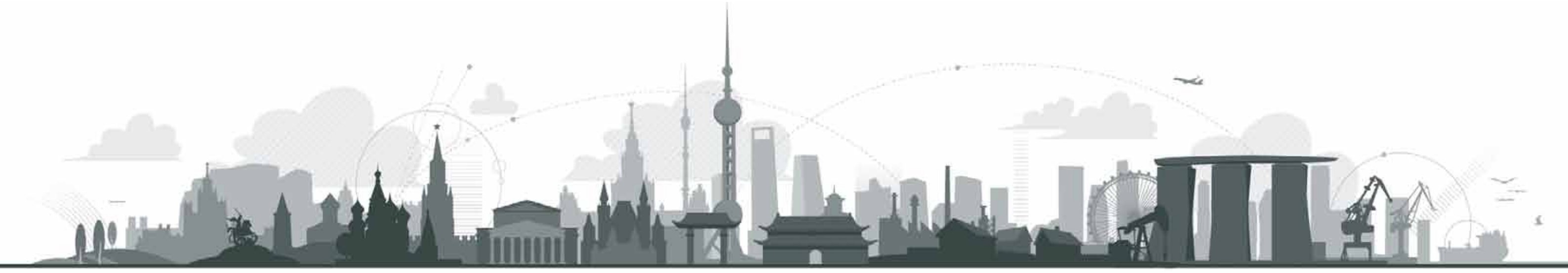

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