"THAILAND'S INVESTMENT ENVIRONMENT: LOOKING FORWARD"
23 JULY 2009
THE BUSINESS ORGANISATIONS' VIEWS

Address by Mr Nandor von der Luehe, Chairman, Joint Foreign Chambers of Commerce in Thailand *(as delivered)*

Excellency, Deputy Prime Minister Kobsak, Excellencies, Distinguished Guests

INTRODUCTION

The Joint Foreign Chambers of Commerce in Thailand is the umbrella organization of the 30 foreign Chambers and Business Associations in Thailand and through the various chambers more than 9,000 companies are represented.

At the JFCCT we are committed to economic growth and we see ourselves as partners of Thailand with a mutual interest in contributing positively to the economy. The JFCCT is non political. We work closely with the government and various agencies to help ensure that Thailand stays competitive and has an economic platform which is attractive for investments. The role of the JFCCT is not to make demands of the Thai Government; our proposals should be seen as efforts to help improve economic conditions. At the same time we consider it our duty to highlight areas of concern that might undermine Thailand's competitiveness or economic enhancement.

To keep a close dialogue with the government is very important and over the past year, in addition to consultations with other agencies, we were able to have regular consultative meetings with the Ministry of Industry and the BoI. Many ideas have been exchanged that go far beyond the activities of the BoI and therefore representatives from other agencies have joined these meetings. It is heartening to see that JFCCT proposals have been duly considered by the government, several taken up and that results could be achieved.

LAST YEAR'S INVESTMENT SEMINAR / OUT-TURN

At last year's investment seminar organized by the JSCCIB the JFCCT emphasised the need to speed up and priorities in investments. I would like to highlight two key aspects.

First, to have a "super investment body". The necessity for such a body is to have harmonised policies across the various ministries. What we have seen in the past up to the present are in many cases contradicting rules and regulations coming out from the various ministries. Such contradictory regulations are partially a result of external upheaval. As the Prime Minister hs mentioned ministerial regulations have been pushed through at a time when apparently there has been limited parliamentary oversight. In many cases, Agencies were looking only at the impact on their own areas without taking into consideration the potential impact on other agencies and the total picture on how to shape Thailand's economic platform.

The idea of the "super investment body" has been raised at various venues and again at the luncheon organized by the JFCCT in February of this year to hear the Prime Minister's policies. It was very positive to hear from His Excellency that he acknowledged and confirmed the problems of not having harmonized policies and the actions he has put in process to correct this shortcoming. The JFCCT very much welcomed the announcement by the Prime Minister to set up a ONE START ONE STOP OFFICE under the Prime Minister's office as a temporary arrangement to ensure harmonization of applications and to enhance ease of doing business -and thus attractiveness - before all laws can be rationalized.

Second, it was noted that the nation's capacity was run down and that there was a need to build and rebuild capacity through infrastructure investments, skills enhancements and liberalisations in order to attract investments. On this front we do not yet see the necessary concrete actions.

COMPETITION TO ATTRACT INVESTMENTS

Investments are long-term decisions and the impact of today's policies will only be seen much further down the road.

For Thailand it is very important to stay attractive in the region and to make the right policy decisions. With the financial crises hitting the world economy, regional competition has heated up but Thailand is at a disadvantage by not only facing the world wide financial crisis but also experiencing political division and tension ever since January 2006.

Political stability and predictability are of utmost importance and this was also emphasized by the JFCCT and others at last year's seminar. Has political stability since last year been achieved? Unfortunately the very much-needed political stability has not yet been fully achieved. Thailand has experienced five major upheavals since last September. The outside world sees Thailand through the international media and the headlines of these upheavals were: State of Emergency declared in September 2008, street clashes with many people injured in October, and the airport closure in December which left business people and tourists stranded in and outside of Thailand. Instead of having tourists as ambassadors relaying positive experiences in Thailand and the great hospitality, they went back with the annoying experience of been stuck in Bangkok with the airports closed. Goods ready for the Christmas business could not be shipped and the economy suffered in addition to the worldwide financial crises a big blow through the internal political division.

Through the dissolution of the ruling party at that time in December the new coalition government achieved parliamentary majority through a democratic process. The JFCCT very much welcomed the swift steps taken by the government to restore confidence and to assure the world that Thailand was back on track. The many presentations and assurances by the Prime Minister showed a positive picture of Thailand.

But these assurances were unfortunately torn apart through new tensions which arose in April with the cancellation of the ASEAN summit where heads of state had to be evacuated and with the declaration of the State of Emergency over the Songkran festival.

It is very important to recognize that for those living in Thailand, life was not greatly affected by such political division. The fact was that our lives went on quite normally - with the exception of the airport closure. At the same time the international community saw a more negative picture of Thailand and investors and friends questioned how safe it was to visit Thailand. Even though Thailand is still a very valid place in which to invest we have to realize that perceptions and facts are very often wide apart from each other.

The JFCCT believes that it is no longer enough to assure potential investors that Thailand is back on track but we need CHANGES -including in some cases demonstrable steps towards fundamental change - and results to be able to convince the world of Thailand's positive investment platform.

INVESTMENT SUCCESS IN THAILAND

In the early 80's Thailand did not enjoy full employment and students had no assurance in finding jobs after finishing their studies. Through the right decision to open up the manufacturing sector and inviting foreign companies to move their manufacturing base to Thailand, we were in a strong position to attract very much needed foreign direct investment. As a result, Thailand's economy went through a rapid expansion and huge wealth was built – not only in the manufacturing sector but in some other sectors as well.

The success of opening up the manufacturing sector is a clear indication that only through opening up could Thailand boost the economy. Closed societies never prosper.

Thailand has enjoyed the economic benefits of liberalisation of the manufacturing sector but as the economy has developed the liberalisation of the service sector seems to have stalled.

The Foreign Business Act is very much the backbone which sets the scene for doing business in Thailand. The Act foresees that a gradual liberalisation process should be undertaken. Unfortunately ever since the Act has been in force since 1999, no businesses have been released for foreign participation under the mechanism afforded.

While there has been debate about which sectors are ready for competition and under the present government the number of businesses under consideration to release has been increased from 17 to 39 results are still very much waited for and some important sectors which would allow for national skills development remain closed to foreign participation.

This government has inherited a legacy in some cases of inappropriate structures, which are hampering investments. Some of the relevant sectors are inefficient and unattractive and real reforms are needed.

Liberalisation of the service sectors we believe would

- Bring innovation to service sectors and thus the economy which they serve generally

- Enhance the skills and knowledge capital of Thailand and thus contribute to capacity rebuilding

- Help to unlock strategic sectors in particular the ICT sectors where ICT related skills, innovation and related technology will have a multiplier effect on the economy, consistent with the plans to move a knowledge-based economy; as the Prime Minister described it today, the creative economy.

To implement reforms and changes in good times is very difficult. Old regimes do not like change but prefer to keep the status quo. Many will say, “If it’s working OK for now, why change it?”

The vision and the political will of the government at all levels are very much needed to implement the essential changes.

The financial crisis, as well as the political tension is challenging all of us but we should keep in mind that it also offers opportunities. The biggest opportunity of the present crisis is to make some fundamental reforms and to show the political will to embark on various road maps for such reforms.

As many have said “Don’t waste a good crisis” – take bold steps and use it to push for reforms and changes. This is the time that the government has the opportunity for real reforms.

For example, the Annex to the Foreign Business Act which is List 3 is about businesses in which Thai nationals are not yet ready to compete with foreigners. Article 21 in the annex of this List 3 says:

“Other categories of service business except that prescribed in the ministerial regulations”.

As part of the overall review of List 3, this “catch all” clause is very much considered as investor unfriendly and **should be lifted and deleted**.

During the recent luncheon with H. E. Kiat Sittheeamorn the President of the Thailand Trade Representative Office we learnt that foreigners can apply for the FBA license for activities listed in annex 2 and 3 of the FBA and that over 90% of the applications have been approved.

The JFCCT very much welcomes that a high rate of applications have been approved but at the same time we interpret this fact that with such a high approval rate the Act in List 3 should be liberalised and the administrative process could be streamlined.

In contradiction to the high approval rate as mentioned by the president of the TTR office we hear from the private sector that many applications are not officially received, applicants are encouraged to withdraw their applications and an informal rejection process is exercised.

Once more changes and **reforms** are needed. Opening up the service sector will give the Thai economy the very much-needed boost. I would like to recall the World Banks last slide and it emphasized that the service sector should be reformed and opened up. The world wide financial crisis has hit everybody around the world and the foreign direct investments to developing countries will according to a recent World Bank report decrease this year in total by 39% (cross border globally by 80%!!). Regional competition has heated up; total investments have fallen and will fall further. To attract the remaining investments, neighboring countries have started to implement reforms and are opening themselves up, in particular in the service sectors. The government should not allow that Thailand is slipping in this context of regional competition and action should be put in place with tangible results.

TELECOMMUNICATIONS & ICT

The telecommunication sector is not performing in the way it could and should. The ICT is a **strategic sector** that should have a positive multiplier effect on the economy.

State Owned Enterprises are competing with the private sector and receiving large concession revenues. They should be encouraged to evolve and - as the Prime Minister rightly noted at the February lunch- the right role for them has to be found. Evolution typically means, over time, radical changes to their lines of business and role in the industry. Their function should be questioned and the necessary structural changes made to keep the sector competitive. Similar institutions in other economies have evolved. It is to be sure a difficult task, but it **can** be done. The evolution of relevant State-Owned Enterprises started with corporatisation but stalled. Now there is draft legislation which would appear to cement avoidance of any further evolution.

Thailand is falling behind countries in the region in the field of ICT. For example Thailand has not yet been in a position to implement 3G mobile technology and just recently the implementation on new spectrum has been postponed again. The industry is speculating about the underlying reasons for this. It is surprising that an unreformed State Owned Enterprise which has no significant 2G business or significant existing mobile network should be seen as the focus for government support for 3G and plans to implement 3G by using existing spectrum and - according to press reports - plans to use mobile-related infrastructure of a concessionee. It is questionable why the State should invest in 3G and not prioritise the proper governmental support -

through policy and the right spectrum - so that the private sector can continue its 3G developments based on free and fair competition.

A basket of other measures - including the immediate liberalization of Category One licences - is the subject of a more detailed submission made by the JFCCT ; we sincerely propose and work always for the good of the economy, particularly considering the positive multiplier effect that should be the goal and result.

A recent European report on competitiveness shows Thailand moved up one statistical place overall but at the same time is slipping in labour efficiency, skills development and of most concern is placed near bottom on all knowledge-based economy / ICT indicators.

Investors would like to see the Thai national flag planted firmly on a thriving innovative and attractive ICT industry overall rather than on the dwindling revenue stream of concession earnings from the sheltered and protected State Own Enterprises, whose evolution need to be supported.

ASEAN ECONOMIC COMMUNITY – OF TOPICAL INTEREST
I would like to take the opportunity to make a note about AEC expectations. This is not in my circulated paper as it is unfolding now.

In an intra ASEAN context, the roadmap to an ASEAN Economic Community (AEC) plan for free flow of trade and investment by 2015 shows service sector liberalisation planned for 2010 in four sectors (**air transport, tourism, telecommunications and healthcare**, allowing for 70% foreign equity limits).

I would like to note:

- The liberalisations are a move in the right direction, but there is no need for Thailand to wait until all economies have the same thing – in fact a key point of the JFCCT recommendations is to get some comparative advantage through attractiveness.

- If not, at what stage will Thailand implement domestic legislation to support the imminent ASEAN treaty?

- Using the telecoms sector example, where we believe reforms of the SOE are needed and the right roles found, if there is no progress, Thailand may be caught short as it will have to liberalise but without the necessarily more efficient industry structure to back it up and capitalise on the benefits of the trade liberalisation.

LABOUR AND IMMIGRATION

Visa and immigration issues are consistently the areas where foreign investors have challenges. Thailand does not issue a business visa per se and investors visiting Thailand have to enter the country with a Non Immigrant visa and need a temporary work permit under the form WP11 that allows them to attend meetings and to conduct business for a very limited period of time. People eligible for an APEC card do not need this additional permit as under the APEC agreement they are allowed to conduct business meetings etc in Thailand during their stay. Every investor coming to Thailand should enjoy a simple process to conduct feasibility studies and existing investors should enjoy an easy mechanism to allow them to attend to their investment and to participate in meetings. Such mechanisms are not only allowed but encouraged by most competing economies.

The requirement to have this temporary work permit only inflates the administrative process and the JFCCT would like to encourage the government to introduce a business visa that would cover automatically the work permit for the duration of the validity of the visa. We believe that this could be achieved very easily and would help the government to streamline the administration. In the old days it was very cumbersome for the Thai nationals to obtain a passport – these days it is a question of hours. Apparently with the right will, old processes can be easily overcome.

In permanent work permits, work location must be listed. We believe that this requirement should be lifted and a work permit issued should cover automatically all of Thailand. These proposals are easy ones for the government to take up and to implement.

Thailand should have an attractive labour market in terms of cost effectiveness and of ease of doing business. At the same time the JFCCT recognizes the importance of social fairness and a balance has to be struck between and ‘employment at will’ concept at one extreme and a highly protected cumbersome regime at the other extreme. Economies with a flexible labour market are generally performing much more strongly than economies with very rigid rules and regulations. Enterprises should be encouraged to enhance their workforces during good times to be able to support business requirements but should also be allowed to adjust their workforce downward in times of contraction, at a reasonable cost. Thailand's severance payments are considered very high but other measures such as subsidised training and reskilling are opportunities which can be taken in harder times.

Thailand has been able to attract a lot of companies in the manufacturing sector partially because of the cost saving factor on labour. At the same time Thailand has tightened the labour laws and to adjust the workforce to market conditions has become very costly.

Investors look at operating costs when they set up their facilities but more and more they also look at the cost when market conditions force them to adjust.

Recent changes such as the elimination of a probation period or the increase of succession payment from 50% to 75% or that contract labour has to be dealt with in the same manner as permanent staff have decreased Thailand's competitiveness in the labour market.

The government must make strategic decisions to ensure Thailand's competitiveness. The JFCCT recognizes that labour issues can be very sensitive and that no-one wants to be seen to favor employers unfairly, but at the same time we believe that the economy is best served by having to make some tough decisions which may not always be immediately popular with all constituents.

PROPERTY

The financial crisis has put some pressure on the property market. The foreign ownership limitation in condominiums left the developers with units in their portfolio that are not taken up by Thai nationals. To help the property sector this limit should be lifted completely or at least raised significantly.

Many foreigners enjoy the great hospitality of Thailand and are interested in having a second home here. The existing laws allow a lease of up to 30 years. If the government would find ways to increase the duration from 30 years to 99 years – (at least in a phased way initially through certain areas like Phuket, Pattaya and Chiang Mai) many more foreigners would be willing to bring their silver dollars to Thailand. Of course the visa permits should be consistent and ensure a long-term stay. These measures would give the property market a significant boost and Thailand would attract a lot of investments.

In summary:

- **DON'T WASTE A GOOD CRISIS**; some fundamental reforms are needed along with some immediate changes. Be ahead of the AEC moves.
- **open up** of the service sector
- **liberalise** the FBA (focus on List 3)
- **implement r**eforms and structural changes in the ICT sectors
- **enhance** skills, build capacity
- **introduce** a business visa
- **ensure** a competitive labour market
- **revise** key aspects of the property sector