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Competition Law Updates

2024 年第一四半期において、インドの競争法に関して幾つかの重要な改正がなされた。本稿では特に重要性の高い①企業結合届出の事前審査要件の緩和と②リニエンス制度の拡大について概説する。

In the past few months, several amendments have been introduced in the competition regime of India. The leniency plus framework was brought into force in February 2024 and in March 2024 the thresholds for asset value and turnover under the Competition Act, as well as *de minimis* target exemption (i.e. exemption from prior approval from the Competition Commission of India ("CCI"), if the target enterprise, on a consolidated basis, does not exceed a certain threshold) were revised. This Article provides an overview of the recent updates.

Revision of thresholds for triggering approval

The Competition Act prescribes that acquisition of one or more enterprises or merger or amalgamation of enterprises, which exceeds the threshold prescribed therein shall be a 'Combination' for the purposes of the Competition Act, requiring prior approval of the CCI prior to its implementation. With effect from 7 March 2024, these thresholds have been revised upwards. The below table outlines prior and revised thresholds:

		Assets		Turnover
Enterprise/Party Level	India	<u>Old</u> : More than INR 20 billion <u>New</u> : More than INR 25 billion	OR	<u>Old</u> : More than INR 60 billion <u>New</u> : More than INR 75 billion
	Worldwide with nexus in India	<u>Old</u> : More than USD 1 billion, with at least INR 10 billion in India <u>New</u> : More than USD 1.25 billion, with at least INR 12.5 billion in India		<u>Old</u> : More than USD 3 billion, with at least INR 30 billion in India <u>New</u> : More than USD 3.75 billion, with at least INR 37.5 billion in India
OR				
Group Level	India	<u>Old</u> : More than INR 80 billion		<u>Old</u> : More than INR 240 billion

		New: More than INR 100 billion		New: More than INR 300 billion
	Worldwide with nexus in India	Old: More than USD 4 billion, with at least INR 10 billion in India New: More than USD 5 billion, with at least INR 12.5 billion in India	OR	Old: More than USD 12 billion, with at least INR 30 billion in India New: More than USD 15 billion, with at least INR 37.5 billion in India

Revision to thresholds for *de minimis* exemption

Even if a combination is covered by the thresholds above, prior notification is not required if the transaction falls within the *de minimis* exemption. The *de minimis* exemption has also been revised upwards and now if the target company in India, on a consolidated basis, has either assets of the value not exceeding INR 4.5 billion (previously INR 3.5 billion) in India or turnover not exceeding INR 12.5 billion (previously INR 10 billion) in India, the transaction will not require the prior approval of the CCI. The revised threshold is effective for two years until March 7, 2026.

Introduction of the Leniency Plus Framework

Following the amendment to the Competition Act in 2023, the CCI has from 20 February 2024, brought into effect the relevant provisions of the Competition Act relating to the 'Leniency Plus' regime, which incentivizes an applicant in an on-going case, to disclose information regarding another cartel which is unknown to the CCI, in exchange for further reductions in penalty in the existing case. The corresponding regulations i.e. Competition Commission of India Lesser Penalty Regulations, 2024 ("**Regulations**") have also been notified.

Below is the summary of the key provisions of the leniency plus framework:

- (i) **Reduction in penalty/Lesser Penalty Plus:** Where a leniency applicant in the 'first cartel' subsequently makes a full, true and vital disclosure in respect of another or 'second cartel', such applicant is eligible for an additional reduction in penalty of up to 30% in the first cartel and a reduction of up to 100% in the second cartel, provided that such disclosure is sufficient to enable CCI to make a preliminary or prima facie determination of cartelization.
- (ii) **Applicability to Individuals and Facilitators:** The benefits of a leniency application will extend to those individuals (directors, employees) who are involved in the first cartel and on whose behalf the application is filed. Further, a cartel facilitator i.e. a party that is not involved in identical or similar trades but participates or intends to participate in furtherance of the cartel, can also become an applicant.
- (iii) **Procedure:** A lesser penalty plus/leniency application must include details of the (a) applicant, (b) ongoing matter, (c) newly disclosed cartel and (d) similarities in the ongoing matter and new cartel, as well as justify that the newly disclosed cartel is separate from the current case. The application can be filed only before the CCI receives the Director General's (DG) investigation report in the ongoing case. Further, only the first applicant disclosing the information will be entitled to lesser penalty. Any subsequent applications will be considered only if CCI rejects the preceding application.
- (iv) **Rejection & Withdrawal:** A leniency application may be rejected if an applicant fails to: (a) provide full, true and vital disclosure; or (b) comply with the conditions for grant of leniency or leniency plus; after such applicant is granted an opportunity of being heard. An applicant may also withdraw its leniency application before the investigation report is submitted to CCI. In such a case, the CCI may still however, use the information provided by the applicant, except the admission itself.
- (v) **Confidentiality:** The CCI and DG are required to maintain strict confidentiality of the identity of the applicant and information, documents and evidence submitted by the applicant unless (a) the applicant has provided

a written waiver, (b) disclosure is mandated by law, or (c) there has been a public disclosure by the applicant. Further information can also be disclosed by the DG, without obtaining the applicant's consent but after (d) recording its reasons in writing and (e) obtaining the CCI's approval, if such disclosure is required for the purposes of the investigation.

Conclusion

The upward revision to the thresholds is industry friendly and a welcome step in view of India's growing economy and the Indian government's efforts to promote ease of doing business in India. The revisions would ensure that fewer M&A transactions will require prior CCI approval. However, it should be noted that the Competition (Amendment) Act, 2023, introduced a concept of "deal value" threshold, which requires any transaction having a deal value greater than INR 20 billion to obtain the prior approval of the CCI. The deal value threshold has not yet come into force, but once effective, it will apply irrespective of the *de minimis* exemption. Separately, the leniency plus regime, which is at par with global jurisdictions, will provide an additional avenue to parties to avail reduction in penalties, and should help in promoting a culture of proper governance and compliance.

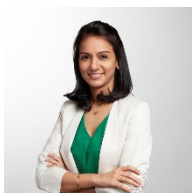
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Thailand

Update on BOI Promotional Measures Related to EV Businesses (Thailand)

タイは自動車産業の集積地となっており、タイ経済への貢献度も高い。タイ政府は自動車産業の国際競争力を維持すべく、近年 EV に関する各種優遇策を相次いで導入しているが、本稿では、2023 年 11 月に承認された自動車製造に関連する投資奨励策、及び、2024 年 2 月に承認された EV 用電池セル及び蓄電システムの製造事業の投資奨励策について、解説する。

Thailand has a large automobile industry which significantly contributes to its economy.¹ To keep up with advancements in technology and ensure that Thailand's automobile industry remains competitive globally, the Thai government, through the relevant governmental agencies (e.g., the Excise Department, Customs Department, Ministry of Industrial Works, Ministry of Energy and the Board of Investment Promotion ("BOI")) has implemented several support measures in recent years to promote the automobile industry, with a particular emphasis on electric vehicles (EVs). Notably, the BOI has provided investment promotion for 103 EV projects, amounting to an investment value of THB 77,192 million as of the end of 2023.² Promotional measures which have recently been implemented or are planned to be implemented by the BOI relating to EV businesses are summarized below.

1. Investment Promotion Measures to Enhance the Automobile Industry³

On 9 November 2023, the BOI Committee approved an incentives package aimed at bolstering the domestic automobile industry and encouraging automobile business operators to use automation and robotics systems to improve production efficiency. Applicants eligible for this incentives package must engage in activities which fall under one of the following categories of BOI promoted businesses:

- (a) Category 3.6: Manufacture of general automobile; or
- (b) Category 3.8: Manufacture of battery electric vehicles (BEV), Plug-In hybrid electric vehicles (PHEV), hybrid electric vehicles (HEV), and BEV platforms (only Plug-in Hybrid Electric Vehicle (PHEV and Hybrid Electric Vehicle (HEV))).

Existing projects which have already received BOI promotion as well as new projects may apply for this incentives package. Details of the incentives package are outlined as follows:

i. Material conditions

- the project's investment value must be over THB 1,000,000, excluding cost of land and working capital. The method for calculating the investment value may vary based on the type of machinery, equipment and software used in the manufacturing process;
- the applicant must propose a plan for investment in automation systems or robotics to support the project's manufacturing process according to the criteria prescribed by the BOI;
- the applicant must propose an automotive product development plan that utilizes technologies aimed at cleanliness, energy efficiency, safety, intelligent driving, or other appropriate technologies; and
- the applicant must submit the application within the last business day of 2024 and must complete the project within 3 years from the date on which the BOI certificate is obtained.

¹ According to BOI Press Release No. 20/2567 (Or.7) dated 21 February 2024, Thailand is the largest automobile manufacturer within the Association of Southeast Asian Nations (ASEAN) and the 10th largest automobile manufacturer in the world.

² BOI Press Release No. 19/2567 (Or.6) dated 21 February 2024

³ BOI Announcement No. 2/2566 re: Investment Promotion Measures to Enhance the Automobile Industry dated 12 December 2023

ii. Tax incentives

- the project will be entitled to exemption on import duties for machinery;
- the project will be entitled to a 3-year corporate income tax exemption for the proportion of 50% of the investment capital for automation and robotics, excluding cost of land and working capital;
- in the case of a new project, if such project uses machinery which connects or supports the domestic automated machinery manufacturing industry in the amount of not less than 30% of the value of machinery which is changed or the value of all machinery, the project will be entitled to a 3-year corporate income tax exemption for the proportion of 100% of the investment capital for automation and robotics, excluding cost of land and working capital; and
- existing BOI-promoted projects will be entitled to a corporate income tax exemption on revenue of the existing project. The period of exemption will start from the date revenue is derived after the BOI certificate is issued.

2. **Investment Promotion Measure for the Manufacture of Battery Cells for EVs and ESS under the Competitiveness Enhancement Act**

On 21 February 2024, Thailand's National Electric Vehicle Policy Committee (EV Board) approved investment promotion measures to be granted under the National Competitiveness Enhancement for Targeted Industries Act of 2017 (the "**Competitive Enhancement Act**") to attract investment from manufacturers of battery cells for EVs and energy storage systems (ESS). Details of the contemplated promotion measures disclosed in the official press release of the BOI⁴ can be summarized as follows:

i. Material Conditions

- the applicant must be a leading battery manufacturer which supplies batteries to EV manufacturers;
- the applicant must have a plan to manufacture EV battery cells and may also manufacture ESS battery cells;
- the applicant must manufacture battery cells with energy density of not less than 150 Wh/kg;
- the applicant must manufacture batteries which have a life cycle of not less than 1,000 cycles, counting from 70% of the nominal capacity at a depth of discharge of not less than 80% at a test temperature of 20-25 degrees Celsius; and
- the applicant must submit the application by the end of 2027.

ii. Incentives

The applicant will be granted financial support from the Competitiveness Enhancement Fund and may receive other incentives under the Competitive Enhancement Act.

Details of the measures are expected to be announced by the Commission on the National Competitiveness Enhancement for Targeted Industries Policies within the end of April 2024.

⁴ BOI Press Release No. 19/2567 (Or.6) and BOI Press Release No. 20/2567 (Or.7) dated 21 February 2024

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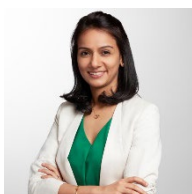
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