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Relaxation of Restrictions on Foreign Business Operations in Thailand

In Thailand, among numerous laws pertaining to the participation in business activities by foreigners, [1]the Foreign Business Act B.E. 2542 (1999) (the “FBA”) is the primary law that provides the most wide-ranging of restricted business activities. From its enactment in 1999, the FBA has prohibited foreigners from operating certain listed businesses in Thailand without a Foreign Business Licence (the “FBL”) or a Foreign Business Certificate (the “FBC”) unless an exemption applies. There are three lists of restricted business activities under the FBA. These are:

- **List I** – business activities that are restricted for foreigners for special reasons, e.g. rice farming, forestry, newspapers, radios, television broadcastings, etc. In general, foreigners cannot engage in these kind of businesses;
- **List II** – business activities that may affect national security or safety, art, culture, customs, native manufacturing, handicraft productions, natural resources or the environment, e.g. manufacture, distribution, and maintenance of weapons of war, manufacture of Thai silk thread, production of cane sugar, mining, etc. Foreigners who have obtained permission from the Minister of Finance, issued by the approval of the Cabinet, can operate these business activities, provided that Thai shareholder(s) must hold at least 40% of the capital of such foreign company. In addition, this requirement can be relaxed by the resolution of the Cabinet, provided that: (i) Thai shareholder(s) do not hold less than 25% of the capital; and (ii) at least two-fifths of the directors of the company must be Thai nationals.
- **List III** – business activities that Thai nationals are considered not adequately prepared to compete on an equal footing with non-Thai nationals, e.g. accounting service, legal service, engineering service, architecture service, etc. Foreigners can operate this kind of businesses only if a licence from the Director-General of the Department of Business Development (the “DBD”), Ministry of Commerce, issued by the approval from the Foreign Business Committee has been obtained.

In our experience, the DBD, being the FBA regulator, generally considers all service business activities (including the provision of loans between affiliated or related companies) as restricted service businesses pursuant to List III of the FBA, which requires a licence under the FBA. Only some business activities such as the manufacture of goods, sale of goods with investment capital from THB100 million, and other exempt business activities under the FBA are not considered as restricted service businesses.

However, over the past years, the restrictions under the FBA have relaxed. Certain businesses have been exempted from requiring the FBL or FBC to operate their businesses in Thailand. In 2003, the Ministry of Commerce has enacted the Ministerial Regulations Prescribing Service Businesses Which Do Not Require a Foreign Business Licence B.E. 2556 (2013) allowing securities businesses, derivatives businesses, and a business of being a trustee in a trust for transactions in capital markets to be operated without the FBL. The reason behind this relaxation was that the DBD viewed that there are specific laws which regulate such business activities and there would be redundancy if such business operators would require both the FBL and the specific business licenses.



Following the Ministerial regulation in 2013, the DBD has added other businesses to the exemption list including financial institution business and financial institution related businesses (i.e. commercial bank business and bank representative office service business), life insurance business, and insurance business by enacting the Ministerial Regulation Prescribing Service Businesses Which Do Not Require a Foreign Business Licence (No.2) B.E. 2559 (2016). This is because financial institution related businesses are essential businesses, which supports the competing capability of the service business of a commercial bank and is a primary business, which commercial banks need to operate. The DBD has expected that the removal of the financial institution and financial institution related businesses would encourage the competition among the business operators to develop the efficiency and quality of their services, which would benefit the investment sectors in the long run.

In 2017, the Ministerial Regulation Prescribing Service Businesses Which Do Not Require a Foreign Business Licence (No. 3) B.E. 2560 (2017) has provided further businesses to be added to the exemption list, including an asset management business, the representative office of foreign juristic persons, and regional office of foreign juristic persons. [2]The DBD has provided that the reason for these additions, is so that Thai nationals are now competent enough to compete in such businesses with foreigners. In addition, the representative office and regional office would endorse foreigners to purchase Thai goods and services via the representative office and/or regional office channel. The DBD considered removing these businesses from the restricted list as an opportunity for Thailand to be an export hub and increase the country's competitiveness, as well as promote service innovation. Besides the removal of the representative office and regional office from the restricted business list, service businesses to which a government agency under the law on budgetary procedures is a party and service businesses to which a state enterprise under the law on budgetary procedures is a party, were also added to the exemption list. Such services given to a government agency, such as rail systems, airports, electricity plants, and petrochemical drillings, are the basic infrastructure, which is relevant to the growth of the nation's economy; therefore, there should be government facilitation including the relaxation on the licence requirements.

These ministerial regulations show that the Thai government policy has been to encourage foreign investors to operate their businesses by relaxing certain regulations, which interrupt or cause difficulty for foreigners.

In late 2018, the DBD has revealed that it plans to revise the exemption list in order to comply with the government policy, the national strategy, and the investment promotion policy to attract foreign investors to Thailand, especially to the Eastern Economic Corridor ("EEC") or EEC area. At this stage, three activities are proposed to be exempted from obtaining the FBL. These are:

- providing loan to affiliates and subsidiaries;
- renting building space and utilities to affiliates and subsidiaries; and
- providing consultation concerning management, marketing, human resource, and technology to its affiliates and subsidiaries.

The relaxation of the FBL requirement for the three activities mentioned above would facilitate foreign investors, especially those within a group company, and encourage such investors to have more investments in Thailand.





It is expected that, in the near future, there would be more activities to be added to the FBL's exempted list, as the government policy is to promote and facilitate investments, especially towards the innovation and technology businesses. Such businesses are mostly related to knowledge, where foreigners would contribute significantly in such knowledge transfer. Moreover, the relaxation of the FBL requirement would reduce the redundancy and complexity of regulatory requirements for foreign investors and to encourage Thailand to become an investor-friendly country.

If you have any questions or require any additional information, please contact [Threenuch Bunruangthaworn](#), [Amnart Khongsakda](#), [Rujaporn Paritsantik](#) or the ZICO Law partner you usually deal with.

This alert is for general information only and is not a substitute for legal advice.

[1] For the purposes of the FBA discussed in this article, a “foreigner” means natural persons or juristic persons as listed below:

1. an individual who is a non-Thai national;
2. a juristic person not registered in Thailand;
3. a juristic person registered in Thailand having 50 per cent or more of its share capital held by the persons mentioned in 1. or 2. above;
4. a limited partnership or a registered ordinary partnership that its managing partner or manager, as the case may be is a non-Thai national; or
5. a juristic person registered in Thailand having 50 per cent or more of its share capital held by any of the persons mentioned in 1., 2. or 3 above.

[2] The representative office and regional office are the offices of a foreign juristic person in international trade service pursuant to the Rules of the Prime Minister's Office on Establishment of Visa and Work Permit Service Centre B.E. 2540 (1997)