

Publication

Proposed Modest Relaxation of Foreign Business Restrictions

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In this issue of SPI Newsletter, Siam Premier partners Chatchavej Chitvarakorn and Kanokon Worachanyawong, together with associate Nicharee Dejakaisaya, report on the Foreign Business Committee's proposal to relax the requirements imposed on foreign individuals and foreign entities wanting to do business in Thailand.

Current restriction: The Foreign Business Act B.E. 2542 (1999) (FBA) restricts the operation of many types of businesses by foreigners. The businesses set out in List Three annexed to the FBA are businesses in which Thai nationals are considered not yet ready to compete with foreigners.

[Foreigners are **not permitted to conduct the businesses set out in “List Three” without a foreign business license or certificate]**



The final item of List Three (21) catches all “other service businesses, except service businesses prescribed in ministerial regulations”. The effect of List Three (21) is to restrict all remaining service businesses save for those specifically carved-out elsewhere under List Three such as hotel management services.

Furthermore, the Ministry of Commerce (MOC), which is responsible for administering the FBA, has historically taken an expansive view as to what constitutes a service business. It considers many ancillary or supporting activities as substantive service businesses requiring a foreign business license or certificate.



Up to this date, the MOC has issued three ministerial regulations which exempt certain service businesses from List Three (21), including

- securities business according to the Securities and Exchange Act,
- derivatives business according to the Derivatives Act,
- life insurance business according to the Life Insurance Act,
- non-life insurance business according to the Non-Life Insurance Act,
- financial institution business, certain businesses in connection with or required for the operation of a financial institution business and other businesses of the financial institution according to the Financial Institution Business Act, and
- service business as a representative and regional representative for a foreign company in international trade business according to the Regulation of the Office of the Prime Minister regarding One Stop Service Center for Visa and Work Permit B.E. 2540 (1997).

The reasons for issuing these ministerial regulations were to remove redundancy where business activities are also regulated under specific laws and to facilitate competition in order to benefit consumers in businesses in which Thai nationals are considered ready to compete with foreigners.

New proposal: The Foreign Business Committee has resolved to propose that the following three service businesses be exempted from the list of other service businesses under List Three (21) of the FBA:

- 1) the business of providing loans to affiliated or group companies in Thailand,
- 2) the business of providing leased space together with public utilities to affiliated or group companies, and
- 3) the business of providing consultation on management, marketing, human resources and information technology to affiliated or group companies.



The reported rationale for such proposal was that the aforementioned service businesses are not directly related to professions and have no adverse effect on local Thai operators as the services are provided exclusively to the affiliated or group companies of the foreign entity.

This is also to facilitate foreign investors conducting business in Thailand by reducing legal formalities and regulatory compliance. With these exemptions, foreign investors would be able to provide these services to their affiliated or group companies without the need to go through the burdensome process of foreign business license or certificate applications. This would potentially attract more foreign investors into Thailand, thereby creating a positive impact on the overall investment climate of the country.

[The Foreign Business Committee has resolved to propose that three service businesses be exempted from the list of other service business under List Three (21) of the FBA]

Timing: No definite timeframe for the proposal has yet been determined. At this stage, the Department of Business Development will submit the matter to the Minister of Commerce who will then propose it to the Thai Cabinet.

Once the Thai Cabinet has approved it in principal, the draft ministerial regulation will be prepared for submission to the Council of State for consideration and it will then be proposed to the Thai Cabinet for final approval. Following the Thai Cabinet's final approval, the ministerial regulation will be effective once it is signed by the Minister of Commerce and published in the government gazette.

We note that the scope of exempted service businesses is subject to comments from the Council of State and the Thai Cabinet, and accordingly the scope may be subject to change. We will closely monitor the process and report on any updates.

Implications: Those most likely to benefit from this proposed relaxation of foreign business restrictions are wholly or majority foreign-owned companies with affiliated or group companies. In our view, this is a welcome development which would facilitate increased foreign business activities in Thailand. It is hoped that the MOC and the Foreign Business Committee will also give some thought to removing the following ancillary or supporting businesses from the scope of List Three which do not affect local Thai business:

- the provision of third party guarantees, pledges and mortgages to support group financings in and outside Thailand,
- the lending of surplus cash to affiliates/ group companies outside Thailand as part of routine treasury operations, and
- contract manufacturing where the substantive manufacturing activity does not require a foreign business license or certificate.

Foreigners should bear in mind that other requirements which may restrict their activities will continue to apply, such as the requirement under section 14 of the FBA that the minimum capital to be used by a foreigner for the commencement of the operation of a business must amount to at least THB 2 million.

Please contact us to further discuss the specific implications of these issues on your business.

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