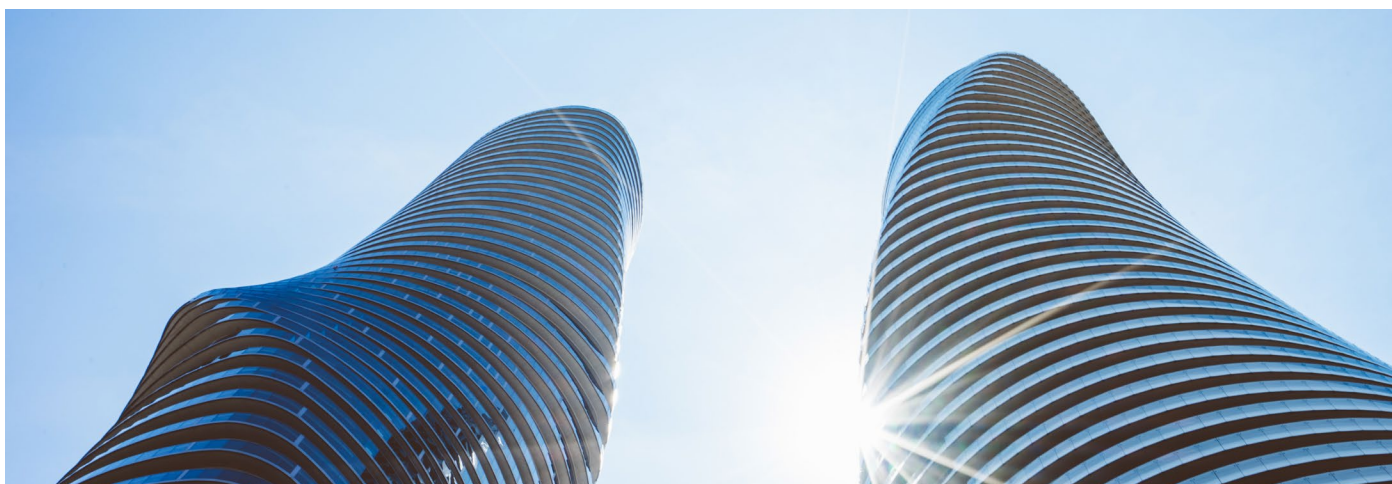


## MINIMUM CAPITAL REQUIREMENT OF FOREIGN BUSINESS

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The Ministerial Regulation Prescribing the Minimum Capital and Period for Bringing or Remitting the Minimum Capital into Thailand B.E. 2562 (2019) (“**Ministerial Regulation on Minimum Capital**”) was published in the Government Gazette on 28 August 2019 and has come into force. This new Ministerial Regulation essentially has the effect of granting a further extension to the period for bringing or remitting minimum capital into Thailand required under the Foreign Business Act B.E. 2542 (1999) (“**FBA**”) from the latest amendment to date – the Ministerial Regulation on Minimum Capital (No. 3) B.E. 2552 (2009) (“**Ministerial Regulation No. 3**”) whose extension period expired on 29 August 2019.



### Definitions

Under the FBA, “**minimum capital**” means:

- paid-up registered capital – in the case where a foreigner is an entity registered in Thailand; or
- foreign currencies brought and used by foreigners at the commencement of the operation of businesses in Thailand – in the case where a foreigner is a natural person or an entity not registered in Thailand.

### General requirement on minimum capital

A foreigner who wishes to operate a business in Thailand is required by the FBA<sup>1</sup> to bring or remit into Thailand a certain amount of minimum capital i.e. at least Baht 2 million for each normal business and at least 25% of the average estimated annual expenditure on the operation of the business over a period of three years (but shall not be less than Baht 3 million) for each restricted business<sup>2</sup> within the timeframe specified by Ministerial Regulation. This minimum capital requirement also applies to foreigners who operate a business by virtue of (i) a bilateral treaty to which Thailand becomes a party; (ii) a treaty by which Thailand is bound in consequence of obligations therefrom; or (iii) a treaty under which nationals of the other party are entitled to operate businesses and exempt from legal restrictions as a matter of reciprocity (each a “**Treaty**” and collectively, “**Treaties**”) – the most often cited example is the *Treaty of Amity and Economic Relations between the United States of America and the Kingdom of Thailand* (“**US-Thai Amity Treaty**”).

<sup>1</sup>Section 14 of the FBA.

<sup>2</sup>Except the case where the foreigner uses money or property derived as revenues from the original business already in operation in Thailand for commencement of another business or for subscribing to shares or investing in any other undertaking or in any other juristic person.

## Reason for Extension

Such Treaties usually contain a provision granting foreigners the same treatment as Thai nationals pursuant to the “national treatment” principle. For example, Article 4 of the US-Thai Amity Treaty states that “*Nationals and companies of either Party shall be accorded national treatment with respect to establishing, as well as acquiring interests in, enterprises of all types for engaging in commercial, industrial, financial and other business activities within the territories of the other Party.*” Therefore, if foreigners who operate businesses in Thailand by virtue of Treaty are subject to the aforementioned minimum capital requirement under the FBA whilst Thai nationals are not, the enforcement of such law would essentially be in breach of the national treatment principle accorded by those Treaties.

In response to this, the Ministry of Commerce (“**MOC**”) amended the Ministerial Regulation on Minimum Capital B.E. 2545 (2002) by issuing the Ministerial Regulation on Minimum Capital (No. 2) B.E. 2547 (2004) (“**Ministerial Regulation No. 2**”) which prescribed the timeframe that foreigners operating businesses in Thailand by virtue of Treaty must bring or remit the minimum capital as required by the FBA into Thailand; i.e. the minimum capital was required to be brought or remitted within five years from the date of the Ministerial Regulation No. 2. The same extension was granted to both new business and existing business established prior to the date of Ministerial Regulation No. 2. This was done to relax, if not exempt, the minimum capital requirement imposed on foreigners operating businesses in Thailand by virtue of Treaty.

However, the extension period of five years granted by the Ministerial Regulation No. 2 expired on 29 August 2009; followed by the issuance of the Ministerial Regulation No. 3 in the same year which granted further extension to such period.

## New Ministerial Regulation

As the extension period granted under the Ministerial Regulation No. 3 expired on 29 August 2019, the MOC submitted the new draft Ministerial Regulation on Minimum Capital to extend the minimum capital requirement period for another 10 years to the Cabinet for approval, and the new Ministerial Regulation on Minimum Capital was published in the Government Gazette on 28 August 2019 and has now come into force.

### Implication:

Following the enactment of the Ministerial Regulation on Minimum Capital, foreigners who operate businesses in Thailand by virtue of Treaty will not be required to bring or remit minimum capital into Thailand for a period of another 10 years from the date the new Ministerial Regulation on Minimum Capital came into force; that is until 29 August 2029 for both new business and the existing business that has yet fulfilled the minimum capital requirement. This is indeed good news.

We note for the completeness that there are other regulations that may impose minimum capital requirements on foreigners e.g. capital requirements for obtaining work permits for foreign workers and capital requirements for applying for certain licenses.

Please contact us if you would like to know more about minimum capital requirements of foreign business Thailand.

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