



## Legal Alert | Foreign Direct Investments

### Removal of Three Restricted Businesses under Thailand's Foreign Business Act

The Foreign Business Act B.E. 2542 (1999) (the “**FBA**”) prohibits any “**foreigner**” from operating certain types of businesses in Thailand without first obtaining a foreign business license or a foreign business certificate. A foreigner (as defined in the FBA) includes any foreign individual or any entity (including a company) registered in Thailand but having 50% or more of its ownership interests (e.g. shares) owned by foreign individuals or entities.

One of the key businesses under the FBA is the “**service business**”. The Department of Business Development, Ministry of Commerce (the “**MOC**”) interprets the definition of service business very broadly, purportedly to extend the coverage of the foreign-restricted businesses. For example, the MOC interprets that a foreigner's guarantee provided in favor of a creditor (to whom such foreigner's affiliate owes) qualifies as a service business under the FBA, even though the guarantee provided is a one-off transaction or involves no remuneration provided to the foreigner. Based on such interpretation, any business may fall within the wide ambit of service business under the FBA.

However, from time to time, the MOC has issued its ministerial regulations to enumerate businesses (each, an “**Exempted Business**”) which do not qualify as a service business under the FBA, and thus, may be carried out by a foreigner without a foreign business license or a foreign business certificate; but a foreigner still needs to comply with other specific rules or regulations applicable to the relevant Exempted Business. Recently, in addition to the existing ministerial regulations on Exempted Businesses, the MOC has finalized the draft ministerial regulation that will classify each of the following businesses as an Exempted Business (the “**Draft Regulation**”):

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1. **Telecommunications Business** – only for the telecommunications operator who operates the telecommunications without having its own telecommunications network (i.e. type 1 telecommunications license under the Telecommunications Business Act B.E. 2544 (2001));
2. **Treasury Center** – for the operation of activities relating to the management or exchange of foreign currencies for affiliated companies under the Exchange Control Act B.E. 2485 (1942); and
3. **Software Development Business** – the operator must be a Thai-registered entity and develop the software for: (i) data management or data analytics (including predictive analytics); (ii) information security and cybersecurity; (iii) controlling or connecting the operation of advanced technological equipment; or (iv) supporting industrial manufacturing activities.

The MOC's representative has reportedly emphasized the importance of the removal of the three Exempted Businesses in the Draft Regulation --- to reduce redundancy and support the goal to create an investment-friendly environment. Effectively, a foreigner who wants to operate an Exempted Business can apply for permission directly from the relevant supervisory body, the MOC's representative has added.

The MOC is preparing to submit the Draft Regulation for the Cabinet's approval (subject to reviews by the Council of State). We believe it should take approximately two months (or so) for the Draft Regulation to take effect.

For more information, please contact the authors.

## About Us

### Foreign Direct Investments Practice Group

Our energetic and experienced lawyers are knowledgeable in a wide range of legal fields and throughout our years of experience, we have skillfully and effectively assisted clients in the commercial, operational and legal aspects of each matter.

Our one-stop corporate services center comprises of a plethora of services including legal assistance on applications for investment promotion with the Trade and Investment Support Office (TISO), International Business Center (IBC) and Board Of Investment of Thailand (BOI) including the application for tax privileges under the IBC scheme with the Revenue Department; share transfer documentation; shareholder agreements; trademark registration; PDPA (Personal Data Protection Agreement); and many others to ensure our clients' success in their investment in Thailand.