



Newsletter No. 1 (EN)

**Who Requires a
Foreign Business License
in Thailand?**

March 2022

Although Lorenz & Partners always pays great attention on updating information provided in newsletters and brochures, we cannot take responsibility for the completeness, correctness or quality of the information provided. None of the information contained in this newsletter is meant to replace a personal consultation with a qualified lawyer. Liability claims regarding damage caused by the use or disuse of any information provided, including any kind of information which is incomplete or incorrect, will therefore be rejected, if not generated deliberately or grossly negligent.

I. Introduction

For conducting business in Thailand, it is mandatory for foreigners to be in the possession of a Foreign Business License issued by the competent Thai authorities according to the provisions of the Foreign Business Act B.E. 2542 (A.D. 1999) (“FBA”).

II. Definitions under the FBA

According to Sec.4 FBA “Foreigner” means:

- (1) *Natural person who does not have Thai nationality;*
- (2) *Juristic person not registered in Thailand;*
- (3) *Juristic person registered in Thailand having the following characteristics:*
 - (a) *Having half or more of its capital shares held by persons under (1) or (2) or a juristic person having the persons under (1) or (2) investing with a value of half or more of the total capital of the juristic person*
 - (b) *Limited partnership or registered ordinary partnership having the person under (1) as the managing partner or manager;*
- (4) *Juristic person registered in Thailand having half or more of its capital shares held by the person under (1), (2) or (3) investing with the value of half or more of its total capital.*

For the purpose of the definitions, the shares of a limited company represented by share certificates that are issued to bearers shall be deemed as the shares of foreigners unless otherwise provided by ministerial regulations.

The definition of “Foreigner”, as specified in Sec. 4 FBA, reveals that the law separates foreign juristic persons into 2 different categories:

- (1) Juristic person not registered in Thailand
- (2) Juristic person registered in Thailand having the characteristics as follows:
 - Limited company or public limited company with over 50% of its capital shares owned by foreigner(s),
 - Limited partnership or registered ordinary partnership with over 50% of its capital invested by foreigner(s), or
 - Limited partnership or registered ordinary partnership with a foreigner as the managing partner or manager.

Sec. 4 FBA also specifies the meaning of “Capital” concerning the 3 different kinds of a juristic person registered in Thailand as follows:

“Capital” means the registered capital of a limited company or paid-up capital of a public limited company or the money invested in a partnership or juristic person by its partner(s) or its member(s).

III. Relevant Clauses

The relevant clauses are annexed to the FBA.

1. Annex 1 – Businesses Not Permitted to Foreigners

Foreigners shall be prohibited from operating a business as prescribed in Annex 1 due to special reasons (Sec. 8 (1) FBA).

For example:

- Newspaper publication, radio broadcasting or television station businesses
- Land trading
- Trading and auctioning of Thai antiques or national historical objects

These kinds of businesses are exclusively reserved to Thai companies. It is not possible to obtain the Foreign Business License.

2. Annex 2 – Businesses Permitted to Foreigners under certain Conditions

Annex 2 contains businesses related to the national safety or security or affecting arts, culture, traditions, folk handicrafts, natural resources or the environment (Sec. 8 (2) FBA). Businesses in this Annex are divided into 3 categories:

- (1) Category 1: Businesses related to national safety or security

For example:

- Production, selling, repairing of firearms, gun powder and explosives
- Production, selling, repairing of ships, aircrafts or military vehicles
- Domestic land, waterway or air transportation, including domestic airline business, etc.

- (2) Category 2: Businesses affecting arts and culture, traditional and folk handicrafts

For example:

- Trading of antiques or handicrafts
- Production of Thai musical instruments
- Production of goldware, silverware, nielloware, bronzeware or lacquerware

- (3) Category 3: Businesses affecting natural resources or the environment

For example:

- Manufacturing of sugar from sugarcane
- Mining, including stone blasting or crushing
- Wood fabrication for furniture and utensil production.

A foreign juristic person may be allowed to operate a business as described above in the following cases:

- (1) Juristic person with over 40% of its capital held by Thai (natural or juristic person)
- (2) The Minister (with the approval of the Cabinet) grants permission that the juristic person, having less than 40% of the capital held by Thai, may operate the above businesses. However, the proportion of foreign and Thai shareholders shall not be more than 75% to 25% and the number of Thai directors shall not be less than 2/5 of the total number of directors.

3. Annex 3 – Businesses not yet Permitted to Foreigners

Foreigners shall be prohibited from operating the businesses prescribed in Annex 3 in which Thai nationals are not yet ready to compete with foreigners (Sec.8 (3) FBA).

For example:

- Production of plywood, veneer board, chipboard or hardboard
- Production of lime
- Engineering service business
- Architecture service business
- Legal and accounting service business
- Tour agency
- Selling food or beverages
- All other service businesses, except those prescribed in the Ministerial Regulations (Annex 3 (21)).

The service businesses that do not require a Foreign Business License as prescribed in the Ministerial Regulations B.E. 2556 (A.D.2013)

and its amendments no. 2-4 are divided into 12 categories:

(1) Category 1: Securities business and other businesses under the law on securities and securities exchange

For example:

- Securities trading
- Acting as an investment or financial consultant
- Mutual or private fund management
- Granting loans for a securities business
- Acting as private fund custodian

(2) Category 2: Derivatives business under the law on derivatives

For example:

- Acting as derivatives dealer, advisor or fund management

(3) Category 3: Acting as a trustee under the law on trust for transactions in the capital market

(4) Category 4: Financial institution business

For example:

- Commercial banking business
- Bank representative office service business
- Financial institution agent
- Purchase or assignment of loan debts
- Financing service
- Debt collection
- Hire purchase and leasing

(5) Category 5: Life insurance business (still subject to the permission under the Life Insurance Act)

(6) Category 6: Non-life insurance business (still subject to the permission under the Non-Life Insurance Act)

(7) Category 7: Asset management business

For example:

- Purchase or acceptance of transfer of non-performing asset from financial institution
- Management service of non-performing assets
- Consulting service for debtors, financial institution, or financial business provider in debt restructuring

(8) Category 8: Representative office of foreign juristic person for international trading service

(9) Category 9: Regional office of foreign juristic person for international trading service

(10) Category 10: Service business to which a government agency under the law on budgetary procedures is a party

(11) Category 11: Service business to which a state enterprise under the law on budgetary procedures is a party

(12) Category 12: The following service businesses provided to the affiliated companies:

- Providing loans to affiliates in Thailand;
- Renting out an office space including public utilities; and
- Providing consultation services relating to:
 - Administrative management,
 - Marketing,
 - Human resources,
 - Information technology

The affiliates must fall under the definition of the Ministerial Regulations.

According to the Ministerial Regulations and the amendments, the aforementioned service businesses do not require application for a Foreign Business License, however, it is still required to comply with the criteria of other relevant laws or the official notification.

So far, foreigners may operate the businesses prescribed in Annex 3 in the case of receiving

permission by the Director-General of the Department of Business Development with the approval of the Committee.

This means that foreigners who want to operate a business which has been prescribed in Annex 2 or 3 in Thailand need to seek permission from the Minister with the approval of the Cabinet or from the Director-General with the approval of the Committee, as the case may be.

IV. How to Get a Foreign Business License

Foreigners operating businesses in Thailand can be divided into 4 groups as follows:

- Group 1: Foreigners operating a business in Thailand with a temporary permission granted by the Government
- Group 2: Foreigners operating a business under a treaty to which Thailand is a party or by which Thailand is obligated to abide, such as the Thai-US Treaty of Amity and Commerce
- Group 3: Foreigners operating a business that is promoted under the Investment Promotion Act B.E. 2520 (A.D. 1988) or permitted in writing to operate the industry or trade for export under the law governing the Industrial Estate Authority of Thailand or under other laws
- Group 4: Foreigners operating businesses in all other cases

In case a foreigner under Group 1-3 desires to operate a business under Annex 2 or 3, such foreigner shall apply for a Foreign Business Certificate to the Director-General in accordance with the rules and procedures as prescribed in the Ministerial Regulations.

In case a foreigner under Group 4 desires to operate a business under Annex 2 or 3, such foreigner must apply for a Foreign Business License in accordance with the rules and procedures as prescribed in the Ministerial Regulations.

V. Requirements for Getting the Foreign Business License

1. Minimum Capital

Sec. 14 FBA specifies that:

“The minimum capital used at the commencement of the business operation shall not be less than that prescribed by ministerial regulations and shall in no case be less than two million Baht.

In the case where the businesses in the preceding paragraph require the licenses under the Annex attached hereto, the minimum capital to be prescribed in the ministerial regulations for each of the businesses shall in no case be less than three million Baht.

Ministerial regulations issued by virtue of this Section may also prescribe the time for the minimum capital to be brought or remitted into Thailand.

The provisions of this Section shall not apply in the events where the foreigners make the investment with the money or property derived from the business operation that has previously been in operation in Thailand in another business or use them as a share or an investment in other enterprises or juristic persons.”

Considering Sec. 14 FBA, the minimum capital can be calculated by dividing business operations into 2 categories:

- The minimum capital for businesses which are not listed in an Annex shall comply with the Ministerial Regulations, but it shall not be less than 2 million Baht.
- The minimum capital for businesses which are listed in an Annex shall comply with the Ministerial Regulations, but it shall not be less than 3 million Baht.

“Minimum Capital” in these terms means the foreign currencies that the foreigner brings in and uses for the commencement of business operations in Thailand (Sec. 4 FBA).

The Ministerial Regulation issued by virtue of Sec. 14 FBA prescribes the minimum capital that needs to be brought into Thailand as follows:

- (1) For businesses which are not listed in an Annex: 2 million Baht.
- (2) For businesses which are listed in an Annex: 25% of the average annual estimated expenditure for each business for a period of three years, but not less than 3 million Baht.
For example, the estimated expenditure of the company is 300 million Baht for 3 years; the average annual estimated expenditure for this company is 100 million Baht. Then, the minimum capital that this company needs to bring into Thailand is 25% of 100 million Baht, which is 25 million Baht.
However, in case that the period of business operation is less than 3 years, the minimum capital shall be averaged in accordance with the actual period of business operation on a per annum basis but shall not be less than 3 million Baht.
- (3) The estimated expenditure means the amount of money that the foreigner will spend in Thailand in order to carry out the business in Thailand. The list of estimated expenditure is required to be submitted to the Department of Business Development together with the application for a Business License.
- (4) The required minimum capital must be brought into Thailand from abroad within 3 years. This period starts either with the date of commencing the business or with the date the permission has been granted. The single stages of transferring the capital are as follows:
 - 25% of the minimum capital shall be brought into Thailand during the first 3 months.
 - Another 25% of the minimum capital shall be brought into Thailand within the first 12 months.
 - At least 25% of the minimum capital shall be brought into Thailand each following year (25% each in the 2nd year and 25% in the 3rd year).
- (5) In case the period of business operation is less than 3 years, the minimum capital must be brought into Thailand within 6

months after the date of commencing business or from the date of permission.

The transfer of the minimum capital must be proved to the Department of Business Development within 15 days from the date prescribed above. This is done by handing in a copy of the “Thor Thor 3” Form which is issued by the bank that has received the money.

2. Transfer of “Know-How”

The application has to describe in which way the foreign company transfers “know-how” to Thai workers.

3. Advantage for Thailand

The applicant has to expand on the advantage Thailand is going to gain from the engagement of the foreign company in Thailand (i.e. improvement of Thai economy; improvement of environment).

4. Employment of Foreign Staff

Every employee who is not of Thai nationality needs a work permit to be able to legally work in Thailand. Generally, the ratio between Thai and foreign employees has to be 4:1.

5. No Effect to other Thai Companies

There should be no effect on any Thai company competing in the same field of operation as the foreign company.

VI. The Establishment of a Representative Office

Foreign investors may establish a Representative Office in Thailand to explore the market and business opportunities. However, it is not permitted to use the Representative Office for any income-generating activities.

Previously, foreign juristic persons had to apply for a foreign business license to establish

a Representative Office. Since 9 June 2017, this is no longer needed, which has considerably reduced the complexity of the process and fundamentally shortened the timeline. Merely the notification is required to the Ministry of Commerce.

A Representative Office is permitted for only 5 business activities as follows:

- (1) Sourcing of goods or services in Thailand for the head office
- (2) Checking and controlling the quality and quantity of goods purchased or hired to manufacture in Thailand by the head office
- (3) Giving advice concerning goods of the head office sold to agents or consumers
- (4) Providing information concerning new goods or services of the head office
- (5) Reporting on business trends in Thailand to the head office.

However, it is quite obvious that there are many foreigners who have applied for a permission to operate a Representative Office and have been operating their businesses outside the scope of activities of a Representative Office.

For example:

- Purchasing, ordering or paying for goods on behalf of the head office or its affiliated companies or any activities concerning the purchase

- Exporting goods which have been bought by the head office or its affiliated companies
- Rendering after-sales services in terms of installation and maintenance
- Receiving purchase orders or services on behalf of the head office
- Coordinating purchasing and selling on behalf of the head office, etc.

The Foreign Business Committee has formed an investigation team in order to check on foreign business operations whether they are operating as permitted by the Department of Business Development.

If the foreigners are found to be operating a business other than those permitted, the Director-General may suspend the business and levy fines or penalise the violator (imprisonment of up to 3 years and fine of up to THB 1 million).

*We hope that the information provided in this newsletter was helpful for you.
If you have any further questions please do not hesitate to contact us.*

LORENZ & PARTNERS Co., Ltd.

27th Floor, Bangkok City Tower
179 South Sathorn Road, Bangkok 10120, Thailand

Tel.: +66 (0) 2-287 1882

E-Mail: info@lorenz-partners.com

www.lorenz-partners.com

Attachment: Application Form for Foreign Business License

Tor. 2 Form Page 1

-Official Emblem- Department of Business Development	Application for business licence under Section 17 of the Alien Business Act B.E.2542	Official only Application No. Date re- ceived:..... Issuance date:
Applicant	Name: (in Thai)	Business Licence No. Tax Payer Identification No.
	Name: (in English)	Employer Account No.
Applicant	<input type="checkbox"/> Ordinary person Age.....years old Nationality.....Occupation..... <input type="checkbox"/> Juristic person category:..... Registration no..... Registered in.....on Date..... Address:..... Postcode:..... Tel:..... Fax:	
Type of licence sought	<input type="checkbox"/> Apply for business licence under Schedule II <input type="checkbox"/> Apply for business licence under Schedule III	
Apply for tax payer identifica- tion no./em- ployer account no./submit work rules	<input type="checkbox"/> Tax payer identification no. under the Revenue Code <input type="checkbox"/> Employer account no. under the Social Security Act B.E.2533 Total number of employee.....person Approximate salary amount.....Baht/month Amount at headquarters.....person Branch Office.....amountperson Has had more than 1 employee since Date.....Month.....Year..... <input type="checkbox"/> Work Rule under the Labour Protection Act B.E.2541 (10 employees or more)	
Office/Place of Business in Thai- land	Headquarters: House Code.....located at..... Postcode:.....Tel:..... Fax:.....Email:..... Branch Office(1) House Code located at Postcode.....Tel..... Fax.....Email.....	

