

Legal Issues for Foreign Investors

Definition of a Foreign Company

According to Thai law, a company is foreign if it is registered under the laws of :

- Another country (including all branches , representative offices and regional offices of overseas companies operating in Thailand.
- Thailand and 50 percent or more of its shares are held by non-Thais (individuals or business entities)

The Foreign Business Act of 1999 has identified three lists of activities in which foreign participation may be prohibited or restricted.

Activities stated in List 1 are designed as “ [businesses not permitted for foreigners to operate due to special reasons](#)”

Foreign companies are completely restricted from engaging in the activities contained in List 1.

Activities stated in List 2 are designed as “[businesses related to national safety or security or affecting arts and culture, traditional and folk handicraft or natural resources and environment.](#)”

Foreign companies may only engage in the activities stated in List 2 with prior Cabinet approval.

Activities stated in List 3 are designed as “ [businesses \[in\] which Thai nationals are not yet ready to compete with foreigners.](#)”

To engage in activities stated in List 3, the foreign company must apply for and obtain a Foreign Business License prior to commencing the activity.

There are two common exceptions to the above stated rules:

- If the foreign company obtains an exemption from the above stated rule from the Board of Investment or the Industrial Estates Authority of Thailand.
- If the foreign company is a US company which qualifies for Treaty of Amity protection.

Work Permits

The Alien Occupation Law, adopted in 1973, requires all aliens working in Thailand to obtain a work permit prior to starting work in the Kingdom. An updated version of the Act, adopted in 1978, describes the procedures for issuance and maintenance of work permits and lists certain occupations from foreigners may be excluded.

Exemptions

The Act grants exemption from the work permit requirement to persons occupying the following professions :

- Members of the diplomatic corps

- Members of consular missions
- Representative of member countries and official to the United Nations and its specialized agencies
- Personal servants coming from abroad to work exclusively for person listed under the above items
- Persons who perform duties on missions in the Kingdom under an agreement between the government of Thailand and a foreign government or international organization
- Persons who enter the Kingdom for the performance of any duty or mission for the benefit of education, culture, artes or sports
- Persons who are specially permitted by the Thai government to enter and perform any duty or mission in the Kingdom

Procedures

The Act requires that any alien working in Thailand must obtain a work permit before beginning work. Section 8 of the Act stipulates that while a prospective employer may file an application on the alien's behalf in advance of his commencing work, the actual work permit will not be issued until the alien has entered Thailand in accordance with the immigration laws and has presented him or herself to receive the work permit.

The permit initially will be valid only for the period the alien's Non-immigrant visa gives permission to remain in Thailand under the immigration law. The work permit will be subject to renewal in accordance with the renewed or extended visa. For aliens who are holders of a Thai Certificate of Residence, the work permit can be renewed annually. The Labor Department, subject to subsequent renewal, will in principal grant an initial duration of one year for the work permit. A work permit must be renewed before its expiry date or it will lapse.

Applicants for work permits may not enter the Kingdom as tourists or transients.

Visa and Immigration Law

All persons, other than those in transit and citizens of certain countries, are required to obtain a visa in order to enter Thailand. Foreign nationals who intend to remain in Thailand to work or conduct business must comply with visa requirements in addition to obtaining a work permit.

Visa Categories

The Immigration Act of 1979 as amended in 1980 establishes the following visa categories :

- Tourist
- Visitor transit
- Immigrant
- Non-quota immigrant
- Non-immigrant

[Note : Transit, visitor transit and tourist visa holders are not authorized to work in Thailand.](#)

Tourists : Tourist visas are initially valid for 60 days and are renewable at the discretion of the Immigration Department. Renewals are normally granted for periods up to 30 days at a time.

Visitor Transit : Foreigners who have obtained a transit visa from a Thailand Embassy or consulate will be granted a 30 day stay in the Kingdom. Extensions of stay are normally granted for the period of 7-10 days.

In addition, nationals of 40 countries and 1 special administrative region – Hong Kong SAR – will be able to enter Thailand without a visa and may remain for 30 days per visit. Foreigners who enter the kingdom under the Tourist Visa Exemption category may re-enter and stay in Thailand for cumulative duration of stay of not exceeding 90 days within any 6-month period from the date of first entry.

Non-quota immigrant : This category includes former residents who have lost their resident status but who have reapplied to resume their residency and who have been able to demonstrate a convincing reason to support the granting of this type of visa.

Non-immigrant : Foreigners seeking a prolonged stay, or those coming to work in Thailand, should obtain non-immigrant visas for all family members prior to entering the Kingdom. There are several categories of Non-Immigrant visas which include, among others,

business visa category (B)

dependent visa (O)

investment subject to the provision of the laws on investment promotion (BOI IB)

diplomatic and consular visa category (D)

performance of duties with the mass media (M)

performance of skilled or expert work (EX)

investment (with concurrence of ministries and departments concerned)-(capital investment IM)

study or observation (ED)

Advantages of a Non-Immigration visa include :

- Entitlement of the holder to apply for a multiple re-entry visa to Thailand from the Immigration Division in Bangkok
- Subject to the regulations of the Immigration Authorities, entitlement of the holder to apply for permanent residence in Thailand
- Eligibility for issuance of a work permit to the holder
- Eligibility for temporary visa renewal while processing issuance of a long-term annual visa.

Foreigners are advised to strictly adhere to the rules governing each visa category. They should report any changes of address or status to local police within 24 hours.

In addition, foreigners residing in Thailand for more than 90 consecutive days are required to registered their address with the Immigration Bureau every 90 days. This requirement applies to all foreigners, including holders of work permits and long-term visas. Failure to do so can result in substantial penalties.

Transit, Visitor Transit, Tourist and Non-Immigrant Visas are issued only for the following purposes and duration :

- Diplomats or consular missions (duration as necessary)
- Official missions (duration as necessary)
- Tourism (90 days)
- Sports (30 days)
- Business purposes (1 year)
- An investment which has received authorization from the appropriate government authorities (2 years)
- Investment or other business in connection with investment under the Investment Promotion Act (as determined by the BOI)
- Transit 30 days)
- The controller or crew of a conveyance entering a port or other locality in the Kingdom (30 days)
- Work as a skilled laborer or specialist (1 year)

Land Ownership

In general, non-Thai business and citizens are not permitted to own land in Thailand unless the land is on government –approved industrial estates. However, companies that are more than 50% Thai-owned legally own land.

An exception to the rule relates to projects approved by the Board of Investment. A promoted company with 50% or more of its shares held by foreigners may apply for land ownership by submitting the appropriate forms to the Office of the Board of Investment (OBOI). Once the land acquisition is approved, the OBOI will send a letter of approval to the applicant and will notify the depart of land or the provincial governor.

In addition to project approved by the Board of investment, petroleum concessionaries may own land necessary for their activities.

Under the 1999 amendment to the Land Code, foreigners who invest a minimum of 40 million baht are permitted to buy up to 1,600 square meters of land for residential use, with the permission of the Ministry of Interior.

Foreigners are also permitted to own buildings on land that is leased, because there are no restrictions on building ownership. Foreigners can, thus, lease land and build on it and are permitted to own the structure.

Foreign individuals and foreign companies are allowed to hold title to condominium units in buildings that qualify. The general rule is that foreigners may own no more than 49% of the total units in the building at anyone time. If the proposed transfer would cause the building to exceed 49% foreign ownership it would violate the above rule, and the official would reject the transfer. There are exceptions to this rule for condominium buildings in Bangkok and Pattaya. Condominiums buildings in those cities, if they satisfy certain requirements, are not subject to the 49% rule stated above.

