

WHAT SHOULD BE CONCERNED WHEN OPERATING A FOREIGN-HELD COMPANY IN THAILAND?



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1. Definition of Foreign

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

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

2. Regulated Activities

Regulated activities are stated in the Foreign Business Act and are divided into three groups: List 1, List 2, and List 3.

Activities stated in List 1 are designated 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. Appendix A contains the List 1 activities.

Activities stated in List 2 are designated 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. Appendix B contains the List 2 activities.



Activities stated in List 3 are designated as “businesses which Thai nationals are not yet ready to compete with foreigners.” In order 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. Appendix C contains the List 3 activities.

Note that 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.

Take special note of three things.

- A foreign held company manufacturing its own goods and under its own brand for export is not mentioned in any of the three lists. This means that a foreign company may engage in manufacturing for export without obtaining any special permission from the Ministry of Commerce (provided that the manufactured items themselves are not subject to restrictions, such as Thai handicrafts and firearms).
- note that “other service businesses” are shown in List 3. This effectively serves as a “catch-all” service category. That means that if the foreign company is to provide a service not otherwise contained in List 3, the company must still apply for and obtain a Foreign Business License prior to commencing operation.



- Three, note that special rules apply if the foreign company plans to engage in the activities of “retail sale of goods” or “wholesale sale of goods.” Both of these activities are contained in List 3; therefore, the company must first apply for and obtain a Foreign Business License.

3. Foreign Business License Application

Only foreign companies seeking to engage in List 3 activities are required to apply for and obtain a Foreign Business License prior to commencing operations. However, the application process has two distinct steps. The first is the process by which the presiding official at the MOC accepts the application for review by the Committee, and the second is the Committee’s actual review of the application.

4. Nominee Shareholders

Note that Thailand forbids this practice and imposes severe penalties for Thais who act as nominees and foreigners who “cause” Thai’s to act as nominees. The penalties also extend to situations where Thai nationals aid foreigners in operating a business in contravention of the Foreign Business Act.

Author



Michael Doyle
Senior Partner

Tel: (662) 693 2036
Email: michael@serimanop.com

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Seri Manop & Doyle Ltd.

No. 21 Soi Amnuaiwat, Sutthisan
Road, Samsennok Sub-district,
Huaikhwang District, Bangkok 10310,
Thailand

Tel: (662) 693 2036
Email: info@serimanop.com

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