

Thailand changes Foreign Business Act regarding certain services between related companies

by

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Introduction: With effect from 13 June 2019, a number of business activities are now exempt from the obligation to apply for a Foreign Business Act licence, but only if the services are between related companies, as defined below

The exempt business activities: These are:

1. Domestic money lending,
2. Office building space renting with public utilities,
3. Management, marketing, personnel management and information technology consulting services

Related companies: The services are only exempt from FBA licencing if they take place between related companies or partnerships, as follows:

- Where shareholders or partners exceeding half of the total shareholders or partners of a juristic person, are shareholders or partners exceeding half of the total shareholders or partners of another juristic person.
- Where shareholders or partners hold shares or are partners from 25% of the capital of a juristic person, holding shares or being partners from 25% of the capital of another juristic person.
- Where a juristic person holds shares or is a partner, holding 25% of the capital of another juristic person.
- Where a director or partner holding more than half of the management powers of a juristic person, is a director or partner holding more than half of the management powers of another juristic person.

Comment: Since the FBA was passed in 1999, and its predecessor regulation NEC 281 passed in 1972, liberalization of foreign participation in business activities in Thailand has been minimal. The big divide continues to be between manufacturing, where almost all manufacturing acting activities are open to 100% foreign ownership without a licence, and services, where the opposite is the case, and all service activities are limited to a maximum of 49% foreign ownership, except where 100% foreign ownership may be granted on the grounds of substantial capital payment (e.g. in the case of retailing, wholesaling or construction of infrastructure), or where a FBA licence for majority foreign ownership is granted.

This regulation is very limited in its scope and impact. It is disappointing that the authorities did not feel justified in taking a more adventurous approach.

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