

Thailand changes rules for payment of share capital

by

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Introduction: In August 2019, the Ministry of Commerce issued a new regulation under the Foreign Business Act relating to the payment of share capital by companies subject to the FBA.

Minimum capital: The minimum capital required where a company is subject to the FBA for commencement of business operations is Baht two million.

The minimum capital in a case where a FBA licence is required, must not be less than 25% of the annual average estimated expenses for business operations for a period of three years, with a minimum of Baht three million.

Where the period of business operations is less than three years, the amount is averaged according to the period of business operations, based on the yearly average of the period of business operations, with a minimum of Baht three million.

The estimated expenses means the amount that will be used in Thailand for business operations so as to acquire permanent assets and for use as expenses in business operations in each year.

Capital must be transferred into Thailand: An ordinary person or juristic person not registered in Thailand must transfer foreign currency the minimum capital payment required into Thailand in full within a period of three years from the date of commencement of business operations, or the date of obtaining the FBA licence. In the first three months the amount transferred into Thailand must be not less than 25% of the minimum capital, 50% within a period of one year, and the balance transferred by not less than 25% of the minimum capital per year.

Where business is to be operated for less than three years: Where the period of business operations is less than three years, the minimum capital transferred into Thailand must be made within six months from the date of commencement of business operations, or the date of obtaining a FBA licence.

Where the business is operated pursuant to a Treaty: Where the business is operated under a treaty to which Thailand is a party, or under an agreement which grants exemption for citizens of the other party on a reciprocal basis, the minimum capital must be transferred into Thailand in full according to the bases above, within 29 August 2029.

This would apply e.g. to treaties formed under the Thailand – USA Treaty of Amity or under the special treaties that Japan and Australia have with Thailand.

Proof of payment: Evidence of transferring the minimum capital into Thailand, with a computation of such into Thai currency reached by applying the reference rate of exchange on the date of transferring the capital into Thailand, must be filed with the Ministry of Commerce within 15 days from its being transferred into Thailand.

An alien who operates business in Thailand under a treaty to which Thailand is a party or under an agreement which grants exemption for citizens of the other party on a reciprocal basis prior to the date of enforcement of these regulations, but has not yet transferred the minimum capital in full according to the bases above, must transfer the money within 29 August 2029.

Comment: All companies whose activities fall under the Foreign Business Act should note and observe these new minimum capital payment rules. Note that the rules for capital payment required for a visa and work permit where a foreigner is to be employed by a company, will continue to apply. The basic rule is that for every foreigner employed, the company must employ at least four Thais and have two million Baht in fully paid up capital.

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