

Applying for a permission to operate a business under the Foreign Business Act BE. 2542 (1999)

According to the Foreign Business Act BE. 2542 (1999), foreigners are prohibited from operating some categories of businesses, and some categories of businesses can be operating by obtaining a licence or a certificate according to the Business Lists as a case may be.

1. Definition of a foreigner

The following person or juristic person is defined as a foreigner:

- (1) Natural person not of Thai nationality.
- (2) Juristic person not registered in Thailand.
- (3) Juristic person registered in Thailand having half or more of its capital shares held by person or juristic person as mentioned in (1) or (2).
- (4) Juristic person registered in Thailand having half or more of its capital shares held by (1), (2) or (3).

2. The Business Lists under the Foreign Business Act BE. 2542 (1999)

- (1) Business List 1: covers Business which foreigners are not allowed to operate.
- (2) Business List 2: foreigners can operate business if permitted by the Minister of the Ministry of Commerce with the approval of the Cabinet.
- (3) Business List 3: foreigners can operate business if permitted by the Director - General of the Department of Business Development with the approval of the Committee

3. Application forms and application fees

- (1) Complete application forms called Tor.2 , together with supporting documents
- (2) License application fee is 2,000 Baht

4. Venue for submitting an application

- (1) Bangkok : Bureau of Foreign Business Administration , the Department of Business Development, Ministry of Commerce, Nonthaburi1 Rd. 11000, Tel (662) 5474425-26, Fax (662) 5474427 -28
- (2) Other provinces: Provincial Commercial Offices

5. Procedure of issuing a license

- (1) Business List 2: the Department of Business Development will propose an application to the Minister of Commerce who will endorse to

the Cabinet. After the approval of the Cabinet, the Department of Business Development will notify the applicant and issue the license within 15 days.

(2) Business List 3: the Department of Business Development will conclude the application details to the Sub-Committee and Committee of Foreign Business for an approval. After the Director- General's approval, the Department of Business Development will notify the applicant and issue the license within 15 days.

(3) The consideration period for approval of the application must be finished within 60 days. Operating business can be done after obtaining the license.

(4) In case of disapproval, written notification will be sent to an applicant within 15 days and the applicant is entitled to appeal to the Minister of Commerce within 30 days (no application form is required). It can be written as a letter by submitting to the Department of Business Development. The appeal consideration period will not exceed 30 days.

6. License fees

(1) Business List 2: 10 Baht for each registered capital of 1,000 Baht with the minimum of 40,000 Baht and the maximum of 500,000 Baht.

(2) Business List 3: 5 Baht for each registered capital of 1,000 Baht with the minimum of 20,000 Baht and the maximum of 250,000 Baht.

7. Certificate for operating a business instead of applying a license

(1) Foreigners, who are eligible for the privilege under the Treaty, can request for a certificate for operating a business in List 1, List 2 and List 3.

(2) Foreigners, who are promoted under the investment promotion law, can request for a certificate for operating a business in List 2 and List 3.

(3) An applicant must complete application forms called Tor.6 , together with supporting documents, by submitting them to the Department of Business Development and the Director-General will issue the certificate within 30 days of the application submission date.

(4) Certificate application fee is 2,000 Baht and certificate fee is 20,000 Baht.

8. Minimum capital and conditions:

(1) Either licensees or certificate grantees under the Treaty must have the minimum capital as prescribed in the ministerial regulations i.e not less than 25% of the average per year of three year estimated expenditure. For instance, estimated expenditure on the average per year

of three year estimated expenditure is 100 million Baht. Hence, the minimum capital is 25 million Baht. Therefore, if the company, which is registered in Thailand, has a registered capital less than 25 million Baht, it has to increase its capital. Meanwhile, in the case where the company not registered in Thailand, 25 million Baht have to be remitted into Thailand.

(2) No required minimum capital for certificate grantees under the Investment Promotion Certificate.

(3) The followings are the conditions for the foreign licensees to be comply with:

3.1) the ratio of the capital and loans to be used in the permitted business is 1:3. i.e. while capital is 100 Baht, business loan can not be exceeding 300 Baht.

3.2) at least one of foreign directors must have domicile in Thailand.

3.3) the minimum capital must be kept up until stop operating a business in Thailand ie the minimum capital can be retained in various forms such as fixed assets or current assets.

(4) Certificate grantee under the Treaty must comply with the conditions specified in the Treaty.

(5) Certificate grantee under Investment Promotion Certificate must comply with the conditions specified in Investment Promotion Certificate.

Contacting point:

For more details, please contact the Bureau of Foreign Business Administration, the Department of Business Development, Ministry of commerce

Tel (662) 5474425-26, Fax (662) 5474427-28 or e-mail address :
foreign@dbd.go.th

Suggestion:

Complete the application form clearly and the details must be based on the fact of the business nature.

The Foreign Business Act 1999

1. Objectives and necessities to adjust the law

According to Revolutionary Announcement dated November 24, 1972 that has been implemented for such a long period and has some regulations that are not relevant to the current economic situation, investment and international trade, it is considered that such law should be adjusted to enhance a competitive business operation both in Thailand and in foreign countries. This is completely beneficial to Thailand. Moreover, it agrees with the commitments under international Hence, this foreign Business Act 1999 is the law used for controlling business operation of aliens that is adjusted to replace Revolutionary Announcement dated November 24, 1972. It is enforceable from March 3, 2000.

2. The regulations used for considering any entrepreneur as an foreign "Foreigner" means

- (1) any ordinary person who does not hold Thai nationality
- (2) any juristic person that is not registered in Thailand
- (3) any juristic person that is registered in Thailand and has these following aspects:
 - (a) has a half of the capital shares held by a person in (1) or (2) or has the person in (1) or (2) who invests a capital from a half of all capitals in such juristic person.
 - (b) any limited partnership/any registered ordinary partnership of which the managing partner or the manager is the person in (1)
- (4) any juristic person that is registered in Thailand and from a half of the capital shares are held by the person in (1) (2) or (3) or the juristic person that has any person in (1) (2) or (3) investing the capital from a half of the entire capitals in that juristic person.

For the interest of this definition, it is considered that the shares of a company limited that gives its share stock certificates to its shareholders are the shares of aliens unless otherwise stipulated by the ministerial order

3. Business types stipulated in the lists attached to the Act can be divided into 3 lists as follows:

List 1 is the business that an alien is not allowed to perform with special reasons. There are 9 following items.

1. journalistic enterprise, broadcast radio station enterprise, television station enterprise
2. farming and gardening

3. animal husbandry
4. forestry and transforming of natural wood
5. fishery especially in Thai territorial waters and in specific economic zone of Thailand
6. Thai herb extraction
7. Trade and sale by auction of Thai antiques or Thai historically worthy items
8. Founding Buddha images and Buddhist monk's alms-bowls
9. Land trade

List 2 is the list of 13 businesses involving with national safety and security and affecting art and culture, custom and tradition, local crafts or natural resources and environment

Group 1 Business involving with the safety and the security of the nation are these 2 items

1. Production, distribution and repair of
 - (a) weapon, cartridge set, gunpowder, explosive
 - (b) weapons' accessories, cartridge set, explosive
 - (c) war materials, ship, aircraft, military vehicles
 - (d) equipment or accessories of all kinds of war materials
2. Transportation by land, by water and by air in the country, including domestic aviation

Group 2 Businesses affecting art and culture, custom and tradition and local crafts are these following 6 items:

1. Trade of antiques, art materials that are art objects and crafts of Thailand
2. Production of wood carvings
3. Silk worm husbandry, production of Thai silk thread, Weaving of Thai silk cloth and printing design on Thai silk cloth
4. Production of Thai musical instruments
5. Production of goldware, silverware, nielloware, polished stone goldware or lacquerware
6. Production of Thai art crockery, pottery

Group 3 Businesses affecting natural resources and environments are these following 5 items:

1. Granulation of sugar from sugar canes
2. Salt Farming including salt farming from salty soil
3. Rock salt farming
4. Mining including blasting and crushing rock
5. Transformation of furniture and utensils

List 3 is the list of 21 businesses that Thai people do not have prompt operating abilities to compete with aliens.

1. Rice milling and production of flour from rice and farm crops
2. Fishery especially of aquatic animal
3. Forestry from planted forest
4. Production of plywood, veneer, chipboard and hardboard
5. Production of lime
6. Accounting service business
7. Law service business
8. Architect service business
9. Engineering service business
10. Construction except
 - the construction of public fundamental services for public utilities or communication that requires special equipment, machines, technology and skill and that has the capital from Aliens at minimum of 500 million baht
 - other constructions stipulated in the ministerial orders
11. Broker or agent enterprise except
 - being a broker or an agent for stock trade or service relating to a forward trade of agricultural goods or financial printed document or stocks
 - being a broker or an agent for trading or providing necessary goods or services for the production and services in the enterprise's group
 - being a broker or an agent for trading, purchasing or distributing or providing materials both in the country and in foreign countries for selling domestic products or importing product as an international trade with an alien's capital at minimum of 100 million baht
 - being other kinds of brokers or agents as stipulated in the ministerial orders
12. Sale at auction except
 - the international auction that is not an auction of ancient objects, antiques, art materials that are art works, crafts or relics of Thai or historically worthy relics of the country
 - other kinds of auction stipulated in the ministerial order
13. the domestic trade relating to local agricultural products or produces that has not been forbidden by other laws
14. Retailing trade of all goods that has the entire capital at the maximum of 100 million baht or has the least capital of each store at the maximum of 20 million baht
15. All kinds of wholesaling trade that has the least capital of each store at the maximum of 100 million baht
16. Advertising business

17. Hotel business except hotel managing service
18. Tourism
19. Sales of foods and beverage
20. Cultivation, propagating and improving plants
21. Other service businesses unless otherwise stipulated in the ministerial order