

Doyle's Practice Guide to Thailand Business Law

道乐泰国商业投资法律实用指南

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Chapter 3

第三章

What are the Legal Issues Associated with Operating as a Foreign-held Company?

作为外资公司经营所涉及的法律问题有什么？

Thai law regulates the activities in which companies designated as “foreign” may engage. Some are completely prohibited, some may be engaged in with prior approval from a designated government agency only, and some do not require any special approval at all. This chapter discusses the applicable rules associated with operating a business as a foreign company.

泰国法律规定了被指定为“外国公司”的公司可以从事的活动，其中一些活动是完全禁止的，一些只能在指定政府机构批准之后从事，一些根本不需要特别批准。本章将讨论作为外国公司经营业务时适用的规则。

1. Definition of Foreign

1.外国公司的定义

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

根据泰国法律，如果公司是根据以下法律注册的，则被视为外国公司：

- i. Another country (including all branches, representative offices, and regional offices of overseas companies operating in Thailand) or
i. 其他国家（包括在泰国运营的海外公司的所有分支机构、代表处和区域办事处）；
- ii. Thailand, and 50% or more of its shares are held by non-Thais (individuals or business entities).
ii. 泰国，且 50% 或更多的股份由非泰国主体（个人或商业实体）持有；

EXAMPLE: Suppose a company has three shareholders and a total of 10,000 shares. One of the shareholders is German and the other two are Thai. If the German owns 5,000 shares, the company will be classified as foreign and therefore subject to special regulations. Conversely, if this company has two German shareholders and one Thai shareholder and the Thai holds 51 percent of the shares and the German shareholders hold 49%, the company would not be classified as foreign and therefore not be subject to the special regulations.

例如：假设一家公司三位股东和总计 10,000 股股票。其中一位股东是德国人，另外两位是泰国人。如果德国人持有 5,000 股股票，该公司将被归类为外国公司，因此将受到特殊法规的限制。相反，如果该公司改为由两位德国股东和一位泰国股东，泰国股东持有

51%的股份，而德国股东持有 49%的股份，该公司不会被归类为外国公司，因此不受特殊法规的限制。

2. Regulated Activities

2. 受监管的业务

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

受监管的业务在《外国企业法》中有规定，分为三个类别：清单 1，清单 2 和清单 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 activities contained in List 1. Appendix A contains the List 1 activities.

清单 1 中的业务被列为是“由于特殊原因不允许外国人经营的业务”。外国公司完全不能从事清单 1 中的业务。附录A包含清单 1 中的业务。

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.

清单 2 中的业务被列为是“与国家安全或保障有关，或影响艺术和文化、传统和民间工艺、自然资源和环境”。外国公司只能在内阁批准后从事清单 2 中的业务。附录B包含清单 2 中的业务。

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.

清单 3 中的业务被列为是“泰国公民尚未准备与外国人竞争的业务”。为了从事清单 3 中的业务，外国公司必须申请并获得外国商业执照，然后才能开始该业务。附录C包含清单 3 的业务。

Note that there are two common exceptions to the above-stated rules.

请注意，上述规则有两个常见的例外情况：

- i. If the foreign company obtains an exemption from the Board of Investment or the Industrial Estates Authority of Thailand (see Chapter 6).
- i. 如果外国公司从泰国投资促进委员会或泰国工业园区管理局获得了上述规则的豁免（见第 6 章）。
- ii. If the foreign company is a US company which qualifies for Treaty of Amity protection (see Chapter 4).
- ii. 如果外国公司是美国公司，并且符合友好条约保护的条件（见第 4 章）。

Take special note of three things. One, a foreign held company manufacturing its own goods under its own brand for either domestic sale or export is not mentioned in any of the three lists. This means that a foreign company may engage in manufacturing and selling its own branded products 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).

特别注意三点。第一，外资公司自行生产自有品牌商品，无论是国内销售还是出口，都未出现在任何一份清单中。这意味着，外资公司可以在无需获得商务部特别许可的情况下，生产并销售自有品牌的产品（前提是所生产的商品本身不属于限制范围，例如泰国手工艺品和火器）。

Two, note that “other service businesses” are shown in List 3. This effectively serves as a “catch-all” service category. That means 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. This category includes the business activity of leasing both fixed and non-fixed assets. Also, the activities which representative offices and regional offices are allowed to engage in (see Chapter 1) are all services which fall within this category.

第二，注意“其他服务行业”出现在清单 3 中。这实际上充当了一个“兜底”服务类别。这意味着如果外资公司提供的服务不在清单 3 中列出，该公司仍需申请并获得外商营业执照，方可开展经营活动。此类别包括租赁固定和非固定资产的业务活动。此外，代表处和区域办公室允许从事的活动（见第一章）也都属于这一类别的服务。

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, in order for a foreign company to engage in either of them the company must first apply for and obtain a Foreign Business License.

第三，注意如果外资公司计划从事“商品零售”或“商品批发”活动，则适用特别规定。这两项活动都包含在清单 3 中；因此，外资公司若要从事其中任何一项活动，必须首先申请并获得外商营业执照。

This is a source of difficulty for many foreign investors because if they want to engage in the general activity of “trading of goods” meaning retail selling, wholesale selling, or both these are in List 3 and restricted. Thai law, however, grants narrow exceptions to the Foreign Business License requirement for those foreign companies seeking to engage in retail selling and/or wholesale selling. These exceptions are linked to the amount of the foreign company’s registered capital.

对于许多外国投资者来说，这是难题，因为很多时候，如果外国投资者希望从事“商品贸易”的一般活动，这将意味着公司将从事零售销售、批发销售或两者兼有，这些活动都被列于在清单 3 中，并受到限制。然而，泰国法律为寻求从事零售销售和/或批发销售的外国公司提供了对外国商业执照要求的狭义例外，这些例外与外国公司的注册资本金额有关。

For a foreign company to engage in the activity of retail selling, the exception is that if the company has a registered capital of 100 million baht (fully paid up) or more, or capital for each retail store of 20 million baht or more, the company is exempt from the Foreign Business License requirement.

为了让外国公司从事零售销售活动，例外情况是如果该公司的注册资本达到 1 亿泰铢或更多（实缴），或每家零售店拥有 2,000 万泰铢或更多的资本，该公司就不需要持有外国商业执照。

EXAMPLE: A German company establishes a subsidiary in Thailand to engage in wholesale selling to resellers in Thailand and retail selling to end customers in Thailand. In this situation,

the minimum capital needed for the company to avoid the Foreign Business License requirement would be 200 million baht.

例如：一个德国公司在泰国成立了一个子公司，以从事向泰国经销商的批发销售和向泰国最终客户的零售销售。为了避免外国商业执照的要求，该公司的最低注册资本需要2亿泰铢。

For a foreign company to engage in the activity of wholesale selling, the exception that if the company has 100 million baht capital or more for each of its wholesale stores, the company is exempt from the Foreign Business License requirement.

对于外资公司从事批发销售活动，如果该公司每个批发店的资本达到1亿泰铢或以上，则可以免除外商营业执照的要求。

Also, note that a foreign company engaging in the activity of offshore trading (where there is no sale of goods or trading locally in Thailand), does not fall under the restrictions of the Foreign Business Act and such activity may be operated by the foreign company without the requirement of a Foreign Business License.

此外，请注意，从事离岸贸易活动（没有在泰国境内销售或交易商品）的外国公司不受《外国商业法》的限制，外国公司可以在不需要外国商业执照的情况下从事这样的活动

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Foreign companies operating in Thailand that do not require a Foreign Business License must maintain a minimum registered capital of two (2) million baht. On the other hand, foreign companies that are required to obtain a Foreign Business License must have at least three (3) million baht in registered capital for each business activity that they intend to undertake. It should be noted that the Ministry of Commerce (MOC), at its discretion, may require a higher amount of registered capital if it deems it necessary due to the specific nature and scope of the business activities being conducted.

在泰国运营的外资公司，如果不需要外商营业执照，必须保持最低注册资本为200万泰铢。另一方面，必须申请外商营业执照的外资公司，对于其计划从事的每项业务活动，必须具有至少300万泰铢的注册资本。需要注意的是，商务部（MOC）可根据其判断，要求更高的注册资本，如果认为由于业务活动的具体性质和范围，注册资本的增加是必要的。

EXAMPLE: A German company operates two wholly owned subsidiaries in Thailand: one engages in manufacturing products under its own brand for export and sale overseas and, therefore, is not required to obtain a Foreign Business License; the other engaging in the service of equipment maintenance, is required to obtain a Foreign Business License. In this situation, the manufacturing company would be required to maintain a minimum registered capital of two (2) million Baht, while the service company would be required to maintain a minimum registered capital of three (3) million Baht unless the MOC deems it necessary at its discretion for either, or both, to maintain a higher minimum registered capital due to the nature of the respective businesses.

例如：一家德国公司在泰国运营两家全资子公司：一家从事自行车品牌产品的生产，主要用于出口和海外销售，因此不需要获得外商营业执照；另一家从事设备维修服务，则需要获得外商营业执照。在这种情况下，生产型公司需要保持最低注册资本200万泰铢，而服务型公司则需要保持最低注册资本300万泰铢，除非商务部认为根据各自业务的性质，必要时可以要求其中一家或两家公司保持更高的最低注册资本。

Note that due to a special exception granted to parties operating under a treaty with Thailand issued by the MOC in 2019, US companies operating in Thailand under the Treaty of Amity between Thailand and the US (see Chapter 8) are exempt from the above minimum capital requirements until 2029.

注意，由于商务部在 2019 年根据泰国与其他国家签订的条约所授予的特殊豁免，美国公司根据泰国与美国之间的友好条约（见第八章）在泰国运营，免除上述最低资本要求，直到 2029 年。

EXAMPLE: If we take the same facts as above, but instead of a German company it is a US company operating two wholly owned subsidiaries in Thailand which qualify under the Treaty of Amity between Thailand and the US, then the above explained minimum capital requirements would not apply to the two subsidiaries until 2029.

例如：如果我们以上述相同的情况为例，但将德国公司替换为一家根据泰国与美国之间的友好条约（Treaty of Amity）符合资格的美国公司在泰国运营两家全资子公司，那么上述最低资本要求将不适用于这两家子公司，直到2029年。

3. Foreign Business License Application

3. 外国商业执照申请

As stated earlier, foreign companies seeking to engage in List 3 activities are required to apply for and obtain a Foreign Business License prior to commencing operations.

如前所述，希望从事清单 3 中活动的外国公司必须在开展业务前申请并获得外国商业执照。

The Foreign Business Act sets forth the process by which the Foreign Business Committee (“Committee”) reviews the application. It states that the Committee is required to rule on the application within 60 days of submission. However, practically speaking, 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; the second is the Committee’s actual review of that application.

外国商业法规定了外国商业委员会（“委员会”）审核申请的流程。法律规定，委员会必须在提交申请后 60 天内作出裁决。然而，从实际上来说，申请程序有两个分别的步骤。第一步是由商务部主管官员受理申请并提交给委员会审核，第二步是由委员会对申请进行实际审核。

a. Acceptance by the MOC Official

a. 商务部官员的受理

An application for a Foreign Business License is submitted to the MOC, together with all required documents and information.

外国商业执照的申请需提交给商务部（MOC），并附上所有必要的文件和信息。

(Appendix D contains the Foreign Business License application form, together with an English translation. Appendix E contains the initial list of supporting documents required to be submitted with the application for a company limited.

（附录D包含外国商业执照申请表及其英文翻译。附录E包含提交公司有限责任申请时需要附上的初步支持文件清单。

Appendix F contains the list of supporting documents required to be submitted if the applicant is a foreign company seeking to operate as a branch, representative office or regional office.)

附录F包含如果申请人是外资公司，且寻求作为分支机构、代表处或区域办公室运营时，需提交的支持文件清单。)

The presiding MOC official, charged with accepting the application normally will not do so until he is satisfied that all the documents are in order. Sometimes the official will perform the preliminary inspection upon presentation, but usually he will require the person submitting the application to leave it with him so that he can inspect the documents later. This can be frustrating, because unlike the Committee's review, the time frame for the official's review of the application is not specified by statute.

负责接受申请的商务部（MOC）主审官通常在确认所有文件齐全后才会接受申请。有时，主审官会在提交时进行初步检查，但通常他会要求提交申请的人将申请留给他，以便稍后检查文件。这可能会让人感到沮丧，因为与委员会的审查不同，主审官审查申请的时间框架没有法律规定。

The process is further complicated by the fact that the applicant will normally be required to contact the same individual official each time he wants to follow up with the application until such time as it is officially accepted. This can easily cause delays if the official becomes sick, goes on vacation, etc.

该过程会变得很复杂，因为通常申请人每次想要跟进申请时，都需要联系同一位官员，直到申请正式被接受。如果该官员生病、休假等情况发生，容易导致延误。

In order to avoid these delays, make sure that the person designated to submit the application is familiar enough with the intended operations of the company to respond on the spot to the official's questions regarding the application.

为避免这些延误，确保指定提交申请的人足够熟悉公司拟定的业务，能够当场回答官员有关申请的问题。

Also, when the official requests additional documents and/or information, make sure that the designated person supplies those documents in a timely fashion.

此外，当官员要求补充文件和/或信息时，请确保指定的人及时提供这些文件。

b. Review by the Committee

b. 委员会审核

Once the official accepts the application and issues a receipt, the sixty-day consideration period begins (however the Committee may extend the consideration period for another sixty-day period if it deems it necessary). Factors considered by the Committee when reviewing applications include:

一旦官员接受申请并发放收据，就开始了六十天的审议期（但如果委员会认为必要，可以将审议期延长六十天）。审议申请时委员会考虑的因素包括：

i. The advantages and disadvantages to the nation's safety and security;

i. 对国家安全和保障的优劣势；

ii. Economic and social development;

ii. 经济和社会发展；

iii. Public order, good morals, art, culture and traditions of the country;

- iii. 国家的公共秩序、善良风俗、艺术、文化和传统；
- iv. Natural resources, conservation, energy and environment, consumer protection, size of the enterprises, employment; and
- iv. 自然资源、保护、能源和环境、消费者保护、企业规模、就业；以及
- v. Technology transfer and research and development.
- v. 技术转移、研究与开发。

Technology transfer and research and development are likely to be the most important and the MOC has issued a document advising foreign investors on how they should describe technology transfer in the license application. Technology here is not just limited to R&D and use of sophisticated equipment but also specifically includes, “administration, management and marketing.” Also, any planned programs the company has with Thai universities are taken into consideration by the Committee.

技术转让和研发可能是最重要的，商务部已经发布了一份文件，为外国投资者如何在许可申请中描述技术转让提供了建议。这里的技术不仅仅局限于研发和使用复杂设备，还具体包括“行政、管理和营销”。此外，公司计划与泰国的大学的任何计划项目都将被委员会考虑。

In the event that the Foreign Business License application is rejected, the law requires that the MOC inform the applicant within 15 days of the decision. The notification of rejection must be in writing and expressly state the reasons why the application was rejected.

如果外国商业执照申请被拒绝，法律要求商务部在决定后 15 天内通知申请人。拒绝通知必须以书面形式通知，并明确说明拒绝申请的原因。

If the application is rejected, the applicant has the right to appeal the decision. The appeal must be submitted within 30 days of the date on which the applicant received the rejection notice. The MOC Minister is required to rule on the appeal within 30 days of receipt.

如果申请被拒绝，申请人有权对决定提出上诉。上诉必须在申请人收到拒绝通知之日起 30 天内提交。商务部部长必须在收到上诉之日起 30 天内作出裁决。

4. Nominee Shareholders

4. 显名股东

Generally, nominee shareholders are individuals or companies that agree to hold shares on behalf of the true owner(s) of the shares. In most such cases, the nominee shareholder and the true owner execute an agreement stating that the nominee shareholder agrees to hold the shares in name only. The true owner retains all rights of ownership and control (voting rights, rights to transfer, rights to receive dividends, etc.) of the shares.

通常，显名股东是同意代表隐名股东持有股份的个人或公司。在这种安排下，通常显名股东和隐名股东签署一份协议，说明显名股东同意仅名义上持有股份。隐名股东保留所有所有权和控制权（投票权、转让权、获得股息的权利等）。

This technique was commonly used in order for the company to avoid being legally classified as a “foreign company” and the associated restrictions.

使这种做法过去常被用来避免公司被法律归类为“外国公司”并受到相关限制。

Note, however, that Thailand forbids this practice and imposes severe penalties for Thais who act as nominees and foreigners who “cause” Thais 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.

需要注意的是，泰国禁止此类行为，并对充当显名股东的泰国人以及“引导”泰国人充当显名股东的外国人实施严厉的惩罚。这些处罚也适用于泰国国民协助外国人违反《外国商业法》经营业务的情况。

The penalties applicable to this practice prescribed under the Foreign Business Act range from fines of 100,000 baht to 1 million baht and terms of imprisonment of up to three years or both.

《外国商业法》规定的针对此类行为的处罚包括罚款 10 万到 100 万泰铢和最高三年的监禁，两者都有可能被同时适用。

Jointly produced by Seri Manop & Doyle and Hylands Law Firm
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