

## Legal Issues on FDI in Thailand Part 2: Authorities in Charge of FDI Approvals

The Government of Thailand approves and regulates FDI through several government authorities in charge under different applicable laws. The three major authorities are discussed below.

### (1) Ministry of Commerce (“MOC”)

The MOC regulates and approves FDI of foreigners (defined under the Foreign Business Act B.E. 2542 (A.D. 1999) (“**FBA**”) as a foreign individual, a foreign legal entity, or a Thai legal entity with from a half of its share capital owned by a foreigner). The MOC works with the Foreign Business Committee as the ultimate approval body under the FBA.

A foreigner under the FBA cannot operate the prohibited businesses listed under List 1 of the FBA (radio and television station, rice farming, livestock farming, land trading, etc.).

A foreigner, however, can operate the restricted businesses under List 2 of the FBA (domestic transportation, trading of antiques, mining, wood carving, etc.) if he receives a foreign business license (“**FBL**”) or a foreign business certificate (“**FBC**”) from the MOC.

A foreigner can operate the restricted businesses under List 3 of the FBA (accounting, engineering, advertising, hotels, selling of foods and beverages, services business, etc.) if he receives an FBL or an FBC from the Director-General of the Department of Business Development of the MOC.

Where the MOC grants the FBL or the FBC, a foreigner can own up to 60% of the share capital in a Thai company operating the List 2 businesses and up to 100% of the share capital in a Thai company operating the List 3 businesses.

If the MOC does not grant the FBL or the FBC to a Thai company operating List 3 businesses, the foreign ownership limit in such company is 49% of its share capital.

The MOC grants the FBC to some foreigners for them to operate the restricted businesses without obtaining the FBL if they:

- (a) are nationals of the countries that have signed a treaty of amity or investment partnership agreements with Thailand, such as the USA, Japan, Australia, or
- (b) have obtained an investment promotion certificate under the Investment Promotion Act B.E. 2520 (A.D. 1977) as amended (“**IPA**”), or

(c) have obtained permission to operate businesses in the Eastern Economic Corridor (“**EEC**”) under the Eastern Economic Special Development Zone Act B.E. 2561 (A.D. 2018) (“**EEC Act**”), or

(d) have been obtained permit to operate business in an industrial estate or an industrial park under the Act on Industrial Estate Authority of Thailand B.E. 2522 (A.D. 1979) (“**IEAT**”).

## **(2) Board of Investment Promotion (“BOI”)**

The BOI is in charge of issuing and implementing policies and measures to promote investments under the IPA. The Prime Minister is the chair of the BOI. The economic ministers, senior civil servants, representatives of major private sector organizations, and academics are the Board members of the BOI.

The BOI grants basic incentives (activity-based incentives and technology-based incentive) and additional incentives (merit-based incentives for competitiveness enhancement, area-based incentives and special measure-based incentives) to promote investment activities.

The tax incentives include the exemption and reduction of import duties on imported machinery or raw or essential materials, the exemption of import duties for materials used for R&D, the exemption and reduction of the corporate income tax, and the exemption of the income tax on dividends paid to shareholders.

The non-tax incentives include the rights to bring foreigners to undertake investment feasibility studies, the rights to bring foreign technicians and experts to work under the promoted project, the rights to own land for the promoted project, the rights to remit and repatriate funds in foreign currencies.

## **(3) EEC Policy Committee**

The EEC Act designates Chonburi, Rayong, Chacheongsao provinces as the EEC area for investment with the aim of developing and enhancing the economy and competitiveness of Thailand. The EEC Act establishes the EEC Policy Committee (“**EECPC**”) chaired by the Prime Minister. The EEC Act also establishes the EEC Office (“**EECO**”) to approve and regulate investment projects in the EEC area. The EECPC and the EECO are in charge of preparing plans on land use, infrastructure development, one-stop service, promotion of investment in specific industry promotion zones and industrial estates, and promoting the target industrial activities.

The investment promotion application for the project located in the EEC area eligible to the incentives available under the EEC Act only must be filed with the EECO. The investment promotion application for the project located in the EEC area eligible to the incentives available under both the EEC Act and the IPA must be filed with the BOI Office.

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