

# Mortgages and pledges granted by foreign majority owned companies

Foreign majority owned Thai companies providing security to secure the obligations of a third party including its parent or affiliates will be required to obtain a foreign business license under the Foreign Business Act B.E. 2542 (1999) (the "Act").

## Additional requirement

**Before providing a pledge and/or mortgage, a foreign majority owned company must obtain the relevant foreign business license.**

### Background

Within the last few years, there has been some controversy in relation to guarantees given by foreign majority owned Thai companies ("Foreign Company") which have sought to secure the debt of another company. Securing the debt of another company is considered as a service business pursuant to the ruling of June 2009 issued by the Department of Business Development, Ministry of Commerce of Thailand (the "MoC"). As a result of this ruling a license under the Foreign Business Act B.E. 2542 (1999) is required to be obtained by the Foreign Company for giving such guarantee.

### Grant of mortgages and pledges

Similar issues have recently arisen in relation to the grant of mortgages and pledges by foreign majority owned Thai companies following a recent ruling issued by the MoC in

December 2011. The Office of the Administration of Foreign Businesses Operation of the MoC ruled that mortgaging and/or pledging any assets of a Foreign Company with foreign financial institutions as security for its affiliates, under various financial agreements, regardless of whether the company receives any consideration or not, is a service business under the Act. Therefore, before providing a pledge and/or mortgage, the Foreign Company must obtain a relevant foreign business license.

### Implications

As a result of the recent rulings of the MoC, if a Foreign Company wishes to provide a guarantee, mortgage or pledge to secure the obligations of another company's debts a license for issuing the guarantee or granting the mortgage or pledge should be obtained from the MoC under the Act beforehand.

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In addition, whilst other types of security documents which are commonly used in the market (for example, letter of indemnity, a conditional assignment etc) are not listed in the ruling, it is likely that the MoC will take the view that giving any type of security falls within the scope of "service business" so it is advisable that a license for granting any type of security should be obtained from the MoC prior to a Foreign Company providing such security.

If you require any further information on any of the issues raised in this briefing note please contact the author.

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This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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