

Thailand: ASEAN Comprehensive Investment Agreement

Under the ASEAN Comprehensive Investment Agreement (the "ACIA") qualified foreign-majority owned entities established in Thailand may conduct businesses as agreed in the ACIA in Thailand as the ACIA exempts qualified foreigners from some of the restrictions under the Foreign Business Act. This briefing provides an overview of the criteria for applicants and examples of permitted activities.

Background

Generally, non-Thai individuals, entities or corporations or foreign-majority owned entities established in Thailand ("Foreigners") are subject to restrictions when carrying on business activities stipulated in the Foreign Business Act B.E. 2542 (the "Foreign Business Act") in Thailand.

Exemptions

There are exemptions available for Foreigners to conduct certain businesses under treaties to which Thailand is a party or is obligated to abide by. At the current time, there are several international treaties/agreements to which Thailand is a party and is obligated to abide by including the ACIA. Under the ACIA, a qualified foreign - majority owned Thai entity may conduct the agreed businesses in Thailand once the Foreign Business Operation Certificate (the "Certificate") has been obtained.

Criteria of the Applicant

To apply for the Certificate under the ACIA, the applicant shall notify the Director-General of the Commercial Registration Department, the Ministry

of Commerce ("Department") and the Director-General shall issue the Certificate to the applicant within thirty (30) days from the date on which the application and relevant documents, as listed below, have been filed with the Department.

In order to enjoy benefits under the ACIA, an applicant must be an entity registered in Thailand which has the following qualifications (the "Applicant"):

- if the shareholder(s) of the Applicant are individuals, such individuals must be nationals of Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore and/or Vietnam ("ASEAN Member");
- if the shareholder(s) of the Applicant are legal entities, such entities must have the following qualifications:
 - must be a legal entity incorporated in the country of an ASEAN Member;
 - more than fifty (50) percent of its share capital must be held by an individual who is a national of an ASEAN

Member, looking through to the ultimate shareholders;

- a majority of its directors must be nationals of ASEAN Members and/or Thai nationals; and
- a director who is authorised to sign to bind the legal entity must be a national of an ASEAN Member and/or a Thai national.

Permitted Businesses, Shareholding Restrictions and Conditions

Below are lists of permitted businesses and the relevant shareholding restrictions and conditions:

Mining business

- ASEAN members may hold up to 60% of the shares in mining businesses (on land and sea mining). A number of conditions apply e.g. permission must be granted from the Ministry of Industry, 2 of 5 directors must be Thai and other requirements under the Foreign Business Act and other relevant law(s) also apply.

Flour production from rice and farm produce

■ ASEAN members may hold up to 100% of the shares in businesses involved in flour production from rice and farm produce. Other requirements under the Foreign Business Act and other relevant law(s) also apply.

Fishery and plant cultivation

■ ASEAN members may hold up to 51% of the shares in businesses involved in fishery, especially marine animal culture e.g. Tuna sea cage culture and 6 breeds of Spiny lobster culture. The same general conditions apply to businesses involved in the cultivation and propagation of plants (in particular onion seeds). Conditions apply e.g. consent

must be obtained from the Ministry of Agriculture and Cooperatives. Other requirements under the Foreign Business Act and other relevant law(s) also apply.

If you have any questions in relation to the issues raised in this briefing please contact the author at the contact details below.

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