

Licensing exemptions for foreign securities firms

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The Stock Exchange of Thailand has taken many steps in recent years towards gradual liberalisation of the country's capital market. For example, more foreign products are now permitted to be offered to Thai investors. This includes qualifying foreign exchange-traded funds, qualifying Asean Collective Investment Scheme and foreign-listed stocks with the intention of secondary listings on the SET. Exchange-control rules have also been relaxed, allowing Thai investors – both institutions and high net worth individuals – to invest in foreign capital markets.

As a result, Thai mutual funds managed by private firms or government authorities have increasingly invested offshore, leading to numerous foreign mutual fund managers, investment banking and private equity firms focusing on Thailand as a new emerging market. Many of these entities have sought advice on the legal guidelines for approaching their prospective Thai investors.

There are several different regulated securities businesses. The licences to conduct those businesses currently are granted solely to banks and financial institutions and local securities companies, which are subject to heavy controls and compliance regulations.

Foreign securities firms generally are not permitted to conduct any securities businesses except as specifically exempted by Thailand's Securities and Exchange Commission (SEC). For example, qualifying foreign securities firms wishing to offer services, not products, to Thai investors can enjoy exemptions for two securities businesses.

One is a discretionary investment management service or what is officially called a "private fund management service", defined as "the management of funds of a person or group of persons who has authorised the management of investment to acquire benefit from securities, whether or not investment in other assets is also made, which management is conducted as an ordinary course of business, in consideration of a fee or other remuneration".

According to SEC Notification Kor. Nor. 43/2549, qualifying foreign securities firms are automatically granted a general exemption to conduct this service without possessing a licence, if the following criteria are met:

- The foreign securities firm has been licensed to conduct a securities business by a foreign regulator, which is an ordinary member of the International Organization of Securities Commissions (Iosco);
- The foreign securities firm solicits and provides fund management services exclusively to any of the prescribed "institutional investors" in Thailand such as the Government Pension Fund, the Social Security Fund, insurance companies, commercial banks and securities companies, whether for their own accounts or the accounts of their institutional customers.

To qualify for the exemption, solicitations should be made only to institutional investors as defined in the notification.

Another type of securities business for which exemptions are available is investment advisory service, which means "giving advice in the normal course of business to the public whether directly or indirectly concerning the value of securities or the suitability of investing in those securities or the purchase or sale of any securities in consideration of a fee or other remuneration ..."

This service is subject to SEC Notification No. Kor. Nor. 22/2544. It gives an exemption to qualifying foreign securities firms to give investment advice to Thai investors, without being licensed in Thailand, if the following criteria are met:

- The foreign securities firm has been licensed to operate a securities business by a foreign regulator, which is an ordinary member of Iosco; and
- The giving of advice is conducted in the following manner:
 - (a) In case of retail investors, the advice shall be conducted through Thai securities companies with proper licences;
 - (b) In case of institutional investors (same as above), the advice is specifically intended for institutional investors – a document showing the worst-case scenario of the investment in structured notes must be provided.

This essentially means qualifying foreign securities firms are free to solicit and be engaged by any Thai institutional investor to give advice on investments, provided the applicable regulatory requirements are met.

When conducting a securities business under the above exemptions, foreign securities firms should still observe conditions and restrictions imposed by other laws. For instance, the services should be provided on a cross-border basis. Otherwise, the foreign securities firm could be deemed to be "doing business in Thailand", which would require a foreign business licence (FBL) under the Foreign Business Act.

Although it is probable an FBL could be obtained, the general post-FBL conditions such as establishing a physical branch office and bringing into Thailand an operating fund of at least 3 million baht could be an excessive burden.

Furthermore, representatives of the foreign securities firms sent to Thailand to conduct any business activities would require proper business visas from a Thai embassy or consulate and then work permits from the Employment Department.

Finally, any foreign securities firm wishing to open a representative office in Thailand for the purpose of being a contact point for its Thai investors can formally apply for a licence with the SEC, the process for which should be merely procedural.