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Relaxation of Restrictions on Representative Offices and Regional Offices in Thailand

In 2016, Thailand was listed as the 46th most favorable country in which to do business by the World Bank in its *Ease of Doing Business* report. Thailand's ranking—an improvement of three spots over its 2015 position—places the country third in Southeast Asia, indicating that Thailand has a strong competitive position vis-à-vis its neighbors.

Despite the strong ranking, the Thai government has publicly expressed its intention to do more to improve a variety of business mechanisms and legislation in a bid to further boost the Kingdom's attractiveness to potential investors, as well as to stimulate both domestic and inbound investments.

Restrictions on Investment

The first barriers usually faced by potential foreign investors are the restrictions imposed under the Foreign Business Act B.E. 2542 (FBA). Enacted in 1999, the FBA plays a significant role in influencing inbound movements of foreign funds into Thailand, as it determines which activities are permissible for foreigners or majority foreign-owned companies that are registered in Thailand, whereby half, or more than half, of the shares are held by foreigners.

List 3 of the FBA identifies a number of businesses restricted to foreigners, including wholesale, retail, and engineering services, etc. List 3 (21) concludes with a broad catchall provision that restricts "other service businesses" as being an area in which Thai businesses are not yet ready to compete with foreign investors, whether in terms of finance or technology.

Since the enactment of the FBA, the services undertaken by a representative office (REP) or a regional office (RO) have long been categorized as a "service business" under the catchall provision of List 3 (21). Along with other service businesses that are foreign or foreign majority-owned companies registered in Thailand, REPs and ROs were required to apply for and obtain a Foreign Business License (FBL) or a Foreign Business Certificate (FBC) prior to commencing any restricted activity under List 3 of the FBA.

Foreign investors have long questioned the reasoning behind these FBA requirements for REPs and ROs. Foreign investors often ask why the non-income-generating activities undertaken by REPs and ROs require a license application and compliance with certain license conditions (e.g., the requirement to bring minimum

capital and transfer technology into Thailand). This requirement would seem to run counter to the very limited scope of activities undertaken by REPs and ROs, investors have argued.

Ministerial Regulations Lifting Restrictions

In recent years, the Thai government has taken steps to further liberalize the investment environment set out under the FBA. This has been accomplished through the issuance of ministerial regulations (MR) that exclude certain service businesses from List 3 (21) of the FBA, thus exempting them from the list's restrictions.

A first wave of regulations, enacted in 2013, excluded businesses under Thailand's securities and exchange law from the FBA list. In 2016, MR No. 2 excluded businesses under the financial institution business law, as well as life insurance and casualty insurance businesses, from the list.

Most recently, in June 2017, MR No. 3 amended MR Nos. 1 and No. 2 by removing REPs and ROs, as well as service businesses that have a government agency or a state enterprise under the law of budgetary as a counterparty, from List 3 (21), exempting these businesses from foreign business licensing requirements. This addresses the long-held concern among foreign investors about why REPs and ROs were being included in the restricted business under List 3 (21).

As part of MR No. 3, the table below lists the scope of REP and RO activities that are exempt from FBL:

Activities Exempt from Foreign Business Act Requirements	
Representative Office	Regional Office
<ul style="list-style-type: none"> ❑ Finding sources for the purchase of goods or services in Thailand for the head office and/or affiliates/subsidiaries of the head office. ❑ Checking and controlling the quality and quantity of goods purchased or ordered to be manufactured in Thailand by the head office and/or affiliates/subsidiaries of the head office. ❑ Providing advice and assistance related to goods of the head office and/or affiliates/subsidiaries of the head office which are sold to agents or consumers in Thailand. ❑ Disseminating information concerning new goods or services of the head office and/or affiliates/subsidiaries of the head office. ❑ Reporting on movements of businesses in Thailand to the head office and/or affiliates/subsidiaries of the head office. 	<ul style="list-style-type: none"> ❑ Coordinating and supervising of the operations of branches, and/or subsidiary companies in the same region, on behalf of the head office. ❑ Providing services to the head office's branches and subsidiary companies, with such services including: <ul style="list-style-type: none"> ▪ Consultation and management services; ▪ Personnel training and development; ▪ Financial management; ▪ Control of marketing and sales promotion planning; ▪ Product development; and ▪ Research and development services.

It should be noted, however, that although REPs and ROs are no longer subject to an FBL, they must still prepare and maintain their books and accounts, and file audited financial statements with competent authorities within the prescribed period set by laws. REPs and ROs must also notify the Department of Business Development (DBD), Ministry of Commerce, to obtain a registration number for a juristic person before they commence activities in Thailand. This process is not complicated, and it takes only a few business days to obtain a certified document from the DBD.

This relief for REPs and ROs could further encourage foreign investment in Thailand, because the proceedings required to be undertaken by foreign companies will become more streamlined and convenient. Despite these promising changes, however, foreign investors must still be aware of their continued obligation to obtain other required licenses from specific authorities before they are permitted to operate a service business in Thailand. 🏠