

Online Compliance in Thailand (from page 1)

Child Protection Act

The Child Protection Act prohibits the dissemination of any information relating to a child with the intention of causing damage to the mind, reputation, prestige, or any other interests of that child, or which seeks benefit for oneself or others in an unlawful manner.

Copyright Act

With millions of people spending an increasing proportion of their time online in order to enjoy online content and services, several types of infringing digital content (e.g., movies, songs, or games) can easily be illegally disseminated and consumed through online platforms, increasing the risk of copyright infringements. Notably, an amendment to the Copyright Act that came into force in 2015 provides alternative relief for copyright infringement in the form of a preliminary injunction, allowing the injured parties to have infringing content removed from the internet.

NCPO Orders

In addition to these attempts to curb widespread distribution of unregulated online content, Thailand's interim government, the National Council for Peace and Order (NCPO), has attempted to exert additional controls over digital rights by imposing extensive prohibitions on the dissemination and broadcasting of information via various forms of media.

These NCPO orders empower authorities to prohibit the dissemination and broadcasting of any information that falls within the confines of the following criteria:


- ▶ False content that could cause defamation or have a negative impact on the royal family.
- ▶ News or information that could be harmful to national security.

- ▶ Criticism of the NCPO's operation which is provided in bad faith, or any false information that could impair the NCPO's credibility.
- ▶ Voices, photos, and videos relating to the confidential operation of government agencies.
- ▶ Information which could cause controversy or polarization within the country.
- ▶ Information that invites people, or leads to the assembly of people, in order to oppose NPCO officials, or people associated with the NCPO.
- ▶ A threat to commit an act of violence against other people, or which causes panic or fear among the general public.

On top of these extensive restrictions, the NCPO orders also further prohibit individuals and media from inviting academics, or former civil servants, for interviews or to express opinions that are deemed to be in a manner that could exacerbate conflicts, or which distort information and cause confusion amongst the public.

Moving Forward

The extensive restrictions and prohibitions cited above have not been initiated without concerns being raised in some quarters, and there is consternation that the drive to enforce the law could also result in a reduction in individual rights to freedom of expression.

Therefore, finding a balance and suitable resolutions for these issues appears to be a crucial challenge for Thailand's regulatory authorities, and ultimately, the country's next government, which will come to power after the widely anticipated elections are held in March 2019. In the meantime, and whatever the outcome, it is imperative that both individuals and corporations understand the laws relating to online content, and exercise caution when engaging in any online transactions or businesses, in order to mitigate their exposure to potential penalties that may be imposed for transgressions. 



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BOI Merges Two Promoted Activities into New “International Business Centers”

On December 11, 2018, the Board of Investment (BOI) issued two new announcements: one canceling the International Headquarters (IHQ) and International Trade Centers (ITC) categories of activities for investment promotion, and one introducing a new category called International Business Centers (IBCs). The IHQ and ITC categories had existed in some form for

almost a decade (previously existing in slightly different forms as Regional Operating Headquarters and International Procurement Offices, until they were canceled and replaced by the IHQ and ITC categories for applications submitted in 2015 onward).

This change is intended to make investment in Thailand more attractive to the global community by implementing new international tax standards under the OECD's Inclusive Framework on Base Erosion and Profit Shifting, which Thailand acceded to in June 2017. The framework encourages countries to adjust their tax measures to eradicate inadvertent “gaps and mismatches” in the tax regimes of different jurisdictions, effectively harmonizing tax rules between member jurisdictions. This is intended to prevent exploitation of these “gaps and mismatches,” which have long been used by savvy international tax structures that move capital from one jurisdiction to another, benefiting from favorable tax regimes along the way.

Although the new IBC category is, in principle, merely a combination of the old IHQ and ITC schemes, in practice there are some key new changes that investors—especially those familiar with the old IHQ and ITC schemes—should be aware of.

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Eligible Activities for an IBC

| Eligible activities for an IBC | Same as IHQ and ITC? |
|--|--|
| Organizational administration, management, and business planning | ✓ |
| Procurement of raw materials and parts | * (IHQ formerly permitted "sourcing of goods") |
| Research and development | ✓ |
| Technical support | ✓ |
| Marketing and sales promotion | ✓ |
| Human resources and training and development | ✓ |
| Advisory services relating to finance | * (IHQ formerly permitted "business advisory services") |
| Economic and investment analysis and research | ✓ |
| Credit management and control | ✓ |
| Treasury center | ✓ |
| International trading activities with at least two of the following characteristics: (i) Out-Out; (ii) Out-In; (iii) In-In; and (iv) In-Out. | ITC ✓ |
| Other support services as announced by the Revenue Department | * (IHQ formerly permitted "other services as approved by the Board") |

If an IBC applicant plans to conduct international trade activities, it must also have a scope of business that includes at least one of the services listed above (excluding the "other support services" category, although presumably this may be extended when such services are announced). This is a new requirement and was not required for IHQ or ITC.

Registered Capital

As with the IHQ and ITC, the paid-up registered capital of an IBC must be at least THB 10 million.

Employment

Unlike the IHQ and ITC, an IBC is required to have at least 10 skilled employees. A limited exception is available to IBCs that only provide treasury center services to affiliated enterprises, for which the requirement is reduced to five. This is a new requirement and was not included under the IHQ or ITC categories.

IBC Privileges – Board of Investment

The BOI privileges available to IBCs are generally the same as those under the IHQ and ITC schemes, and are mostly non-tax incentive privileges, such as the right to operate a business with a foreign majority structure, favorable work permit terms for foreign expatriates, the right to own land, etc.

Companies that apply for IBC privileges also enjoy an import duty exemption for machines imported for use in research and development or for training purposes. However, a privilege for import duty on raw or essential materials used in manufacturing of exported products would not be available for IBCs, nor would merit-based privileges.

IBC Privileges – Revenue Department

It is also possible for IBCs to benefit from tax incentives, although to do so they must notify the Revenue Department separately from their application with the BOI. To qualify as an IBC at the Revenue Department, in addition to meeting the requirements of the BOI, the applicant must spend at least THB 60 million, in each accounting period, to recipients in Thailand, and have paid-up capital of THB 10 million at the end of each accounting period. The applicant must

also comply with any other criteria, methods, and conditions stipulated by the Director-General of the Revenue Department in the future.

If an IBC meets these requirements, it will be entitled to the following tax privileges:

- ▶ Reduced corporate income tax rate of 8%, 5%, or 3%, based on expenditures in Thailand of at least THB 60 million, THB 300 million, and THB 600 million, respectively;
- ▶ Exemption from corporate income tax on dividends received from an affiliate;
- ▶ Exemption from specific business tax for income received from treasury center functions;
- ▶ Reduced personal income tax rate of 15% for expatriates working for an IBC; and
- ▶ Exemption from withholding tax for offshore affiliates receiving dividends or interest paid from an IBC.

Impact on Existing IHQs and ITCs

Companies currently promoted under the BOI's IHQ and ITC schemes will not be affected, and they will continue to enjoy the incentives under the BOI investment certificate granted to them. Those who registered with the Revenue Department as Regional Operating Headquarters (ROH1 and ROH2), IHQs, or ITCs may opt to convert to IBCs if they are qualified and meet the conditions, or continue to enjoy the tax incentives laid out by the precedent notification or announcement until the end of the relevant time-frame.

Overall, the new IBC may be less attractive than the precedent ROH, IHQ, and ITC frameworks as a result of the minimum expenditure requirements and other conditions. However, a foreign business license may still be a favorable option for companies that fail to meet the new requirements, and the benefit of harmonization between the Thai investment framework and the international community is likely to promote Thailand as a destination for international offices and domestic affiliates of international corporations. While the new framework may be inconvenient for some, the overall effect on Thailand as an FDI location will likely be beneficial. 🚀