

# Thailand: ASEAN Framework Agreement on Services

Under the ASEAN Framework Agreement on Services (the "AFAS") qualified foreign-majority owned entities established in Thailand may conduct businesses as agreed in the AFAS in Thailand as the AFAS 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

Exemptions are 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 AFAS. Under the AFAS, a qualified foreign-majority owned entity established in Thailand may conduct businesses as agreed in the AFAS in Thailand after a 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 to the Department.

In order to enjoy benefits under the AFAS, 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 examples of permitted businesses and the relevant shareholding restrictions and conditions:

### Professional services

- ASEAN members may hold up to 70% of the shares in businesses providing engineering advisory and integrated engineering services concerned with traffic control systems and businesses concerned with weather forecasting and meteorological services.
- ASEAN members may hold up to 51% of the shares in businesses

providing bookkeeping services (only for tax returns for foreign affiliated companies), legal services for drafting of documents concerning international commercial law and architectural advisory and pre-design services.

#### **Computers and related services**

- ASEAN members may hold up to 70% of the shares in businesses providing hardware and software consultancy services, data processing and database services (excluding those provided over the public telecommunication networks) and maintenance and repair of office machinery and equipment.

#### **Research and development services**

- ASEAN members may hold up to 70% of the shares in businesses providing research and experimental development services in physical science, linguistics and languages and interdisciplinary research and experimental services.

#### **Real estate services**

- ASEAN members may hold up to 70% of the shares in businesses providing residential condominium management services.

#### **Rental/ leasing services without operator**

- ASEAN members can hold up to 51% of the shares in businesses providing leasing or rental services concerning non-Thai flag vessels without operator. Vessels for coastal and transoceanic water transport with operator, pier-to-pier and inland water vessels with operator and pleasure craft are excluded.

Other leasing or rental services concerning space transport, computer servers and furniture are included.

#### **Other business services**

- ASEAN Members may hold up to 70% of the shares in businesses providing services such as:
  - sale of internet advertising space (except on commission)
  - marketing research services (excluding public opinion polling services)
  - human resource management consulting service and services related to management consulting.

#### **Telecommunications services**

- ASEAN members may hold up to 70% of the shares in businesses providing a range of telecommunications services such as electronic mail services although a number of conditions apply.

#### **Construction and other related engineering services**

- ASEAN members may hold up to 70% of the shares in businesses providing services such as construction of mines, industrial plants, harbours, installing and assembling prefabricated constructions and finishing work.

#### **Distribution services**

- ASEAN members may hold up to 70% of the shares in businesses providing retailing services for own brand products made in Thailand, mail order retail and wholesale trade services for books, magazines and stationery, wholesale trade services of medical goods.

#### **Education Services**

- An ASEAN member may hold up to 70% of the shares in businesses providing educational services subject to general conditions.

#### **Environmental services**

- ASEAN members may hold up to 70% of the shares in businesses involved in a range of environmental services such as hazardous waste treatment.

#### **Health related and social services**

- ASEAN members may hold up to 70% of the shares in businesses involved in a range of health related and medical services (including residential health facilities) although there are exceptions such as hospital out-patient clinics, dental, ambulance services and military and prison hospital services.

#### **Tourism and travel related services**

- ASEAN members may hold up to 70% of the shares in a hotel business which offers superior deluxe or six-star plus rated hotel.

#### **Recreation, Cultural and Reporting Services**

- ASEAN members may hold up to 70% of the shares in businesses concerned with amusement parks, libraries, museums, archives and other cultural services, sports events promotion and organisation services (excluding facility operation services).

#### **Transport services**

- ASEAN members may hold up to 51% of the shares in businesses providing certain passenger transportation including international sea cruises. Other categories include the maintenance and repair of rail transport equipment.

### Other Services

- An ASEAN member may hold up to 70% of the shares in other businesses including skills training services related to alternative energy production.

*If you have any questions in relation to this briefing please contact the author below.*

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