

# NO&T Thailand Legal Update

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**This issue covers the following topics:**

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| <b>I. Updates on BOI's Investment Promotion Packages (Elderly Care, Electric Vehicle, International Procurement Office, etc.)</b>      | <b>Yothin Intaraprasong/<br/>Chattong Sunthorn-opas/<br/>Sarita Srichan</b> |
| <b>II. Easing of Foreign-Owned Restrictions on Telecommunications, Treasury Center and Software Development Businesses in Thailand</b> | <b>Yothin Intaraprasong/<br/>Chattong Sunthorn-opas</b>                     |

**I. Updates on BOI's Investment Promotion Packages (Elderly Care, Electric Vehicle, International Procurement Office, etc.)**

The meeting of the Board of Investment of Thailand (the "BOI") held on 4 November 2020 approved a large number of packages in order to promote more investment in various businesses.

Updates regarding the BOI measures can be categorized into three (3) types as follows:

**1. New BOI-eligible businesses**

The following medical-related activities will be added as businesses eligible for BOI promotions.

**1.1 Senior care hospitals and services**

It is predicted that, in 2021, persons over the age of 60 in Thailand will number least 13 million (20% of the entire population). In order to prepare for the impending aging society, the following two (2) businesses will be added as eligible businesses, with the particular incentives stated:

- Senior care hospitals: entitled to a five (5) year CIT<sup>1</sup> exemption; and
- Senior or dependent care services: entitled to a three (3) year CIT exemption.

**1.2 Clinical research**

As part of the plan to enhance Thailand's competitiveness in the medical industry and to promote Thailand as an international medical hub, the BOI wishes to persuade world-class medical specialists to conduct their medical research in Thailand, thus creating the opportunity for medical institutions or personnel in Thailand to obtain expertise and knowledge therefrom. The following two (2) businesses will be added as businesses eligible for the BOI promotion granting an eight (8) year CIT exemption incentive with no limit on amount:

- Contract Research Organizations; and
- Clinical Research Centers.

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1 "CIT" means Corporate Income Tax.

Please note, however, that the following material conditions must be met:

- (i) A total annual salary of not less than 1,500,000 THB for newly hired researchers who are Thai nationals; or
- (ii) Investment capital of not less than 1,000,000 THB (excluding cost of land, working capital, and vehicles).

## 2. Return of previously delisted promoted businesses

### 2.1 Manufacture of electric vehicles

Following the expiration of the former packages in 2018, the BOI will open applications for new incentive packages for the business of manufacture of electric vehicles (“EV”). The investment packages will cover all kinds of EVs, i.e. four-wheelers, motorcycles, three-wheelers, buses, trucks, and ships (the former investment package covered only EV cars and EV buses).

Each type of EV will be subject to different conditions and entitled to different incentives, which can be summarized as follows:

Eligible activities	Material conditions and incentives
Manufacture of four-wheeler battery electric vehicles (“BEV”)	<p>Will be divided into two (2) categories depending on the investment amount.</p> <ol style="list-style-type: none"> <li>1. If the investment amount is <b>five (5) billion THB or more</b>, the promoted company will be entitled to an eight (8) year CIT exemption.</li> </ol> <p>The period of CIT exemption can be extended if there is investment in R&amp;D.</p> <ol style="list-style-type: none"> <li>2. If the investment amount is <b>less than five (5) billion THB</b>, the company engaging in the promoted business will be entitled to a three (3) year-CIT exemption.</li> </ol> <p>The period of CIT exemption can be extended if the project meets certain special conditions, e.g. the production starts within 2022, the production includes specific parts, the total annual production reaches 10,000 cars, and there is investment in R&amp;D.</p>
Manufacture of four-wheeler Plug-in Hybrid Electric Vehicles (“PHEV”)	The company engaging in the promoted business will be entitled to a three (3) year CIT exemption provided that such company shall manufacture at least three (3) parts of EVs.
Manufacture of: <ul style="list-style-type: none"> <li>- EV motorcycles;</li> <li>- EV three-wheelers; and</li> <li>- EV buses and trucks.</li> </ul>	<p>The company engaging in the promoted business will be entitled to a three (3) year CIT exemption.</p> <p>The period of CIT exemption can be extended if the project meets certain special conditions, e.g. the production starts within 2022, the production includes specific parts, and there is investment in R&amp;D.</p>
Manufacture of EV ships	The company engaging in the promoted business will be entitled to an eight (8) year CIT exemption.

In addition, the BOI approved incentives for four (4) more categories in respect of the manufacture of EV parts, namely: i) high voltage harnesses; ii) reduction gear; iii) battery cooling systems; and iv) regenerative braking systems. Furthermore, in order to promote local EV battery manufacturing, the BOI also approved an additional incentive for the manufacture of both battery modules and battery cells. This incentive involves the granting of a 90% reduction of import duties for two (2) years on raw or essential materials.

## 2.2 International procurement office

The international procurement office (“**IPO**”) will be restored as the eligible activity again. The functions of the IPO include the procurement of raw materials, parts and semi-finished goods from Thailand and overseas.

A company engaging in the promoted business under the IPO will mainly enjoy exemptions on import duty on machinery and raw materials to be used in production for exports, in addition to other non-tax incentives.

Please note that one of the most important conditions of the IPO in the past is that the applicant must have or rent warehouse(s). Thus, in the past, most of trading companies had to purchase or rent the warehouse from logistic companies to satisfy this condition which might not be so convenient. While, the recent International Business Center: IBC allows a trading company to do the wholesale business without the condition of the warehouse (although there are other specific restrictions in addition to the IPO). However, this point is not yet clarified based on the current information. We will keep you informed upon the issuance of the official BOI notification in the future.

## 3. Extension and amendment of Productivity Improvement Measure

The BOI will extend, until the end of 2022, the deadline for the application for investors who wish to seek the benefits of what was formerly known as the Production Improvement Measure, and now goes under the new name “Productivity Improvement Measure” (“**Measure**”). However, the benefits under the Measure remain the same, i.e. a 50% CIT exemption for three (3) years and exemption from import duty for machinery.

The Production Improvement Measure was initiated to promote and upgrade technology and machinery for energy conservation, alternative energy utilization or reduction of environmental impacts, as well as to encourage involvement in R&D and advanced engineering design in order to improve production efficiency. The Productivity Improvement Measure is applicable to both of the following:

- (i) Any existing businesses (whether it is a current promoted project or not); however, if it is not a business engaged in a current promoted project, it must be at least a business eligible for the BOI promotions; and
- (ii) A promoted project in relation to which the CIT exemption or reduction privilege has already expired, or where the particular promoted project is not entitled to the CIT exemption.

The Measure covers four (4) sub-measures, i.e.:

- (i) Energy conservation and alternative energy utilization;
- (ii) Production efficiency improvement through upgrading of machinery for manufacturing;
- (iii) R&D and advanced engineering designs for efficiency improvement; and
- (iv) Sustainable development for agriculture.

The requirements under this Measure are:

- (i) A minimum investment capital of not less than 1,000,000 THB (excluding cost of land and working capital); and
- (ii) Submission of the application by the end of 2022 and implementation of the BOI promoted project within three (3) years from the date of issue of the BOI certificate.

Should you require further details of any measures or wish to have further updates, please feel free to contact us.

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## II. Easing of Foreign-Owned Restrictions on Telecommunications, Treasury Center and Software Development Businesses in Thailand

### **Background**

Currently, the Thai government is working on the draft ministerial regulation on prescribing service businesses which do not require a foreign business license No. 5 of ... ("**Draft**") to exempt three (3) further specific businesses from the ambit of restricted business under the Foreign Business Act of 1999 ("**FBA**"), i.e.: i) telecommunications services; ii) treasury centers; and iii) software development businesses. The purposes of the exemption are (i) to reduce the redundancy in regulatory requirements between the Department of Business Development ("**DBD**"), which is the regulator with general oversight in respect of restrictions on foreign-owned businesses, and other regulators exercising specific supervision such businesses, and (ii) to promote an investment-friendly environment for foreign investors in Thailand.

### **Proposed exemptions**

According to the Draft, a foreigner who plans to conduct any of the following three (3) specific businesses will no longer be required to obtain the permission under the FBA:

#### 1) Telecommunications services under the type 1 telecommunications business license

The type 1 telecommunications business license shall be granted to a telecommunications business operator who does not own a telecommunications network, and where it is deemed appropriate for such business to provide such services without restriction (i.e. there is no impact on competition). Example of type 1 telecommunications businesses are<sup>2</sup>:

- Very small aperture terminal (VSAT) services;
- Internet services;
- Audiotext services;
- Store-and-retrieve value-added services;
- International calling card services;
- Internet protocol virtual private network-IP VPNs; and
- Non-facilities based MVNOs.

#### 2) Treasury center

Under the Exchange Control Act of 1942, a treasury center is a company registered under Thai law that is permitted by the Bank of Thailand to manage foreign currency activities for its affiliates both in Thailand and overseas. The scope of treasury centers is<sup>3</sup>:

- Purchasing of obligations or invoices and acting as agents for the payment and receipt of funds;
- Netting of income or obligations;
- Purchasing, selling, or exchanging of foreign currencies and management of exchange rate risks; and
- Management of liquidity.

#### 3) Software development

The scope of software development includes:

- Development and provision of analysis and data management software services, including big data, data analytics, and predictive analytics software;
- Development of information security and cyber security software;
- Development of system software for advanced-technology devices, including business process management; and
- Development of industrial software used to support manufacturing.

Owing to fact that the Draft is in the initial stages, however, the abovementioned businesses are subject to further amendment, in detail, at the Council of the State level and thereafter the Cabinet. Once the proposed exemption is passed, the relevant foreign persons will no longer be required to obtain the permission under the FBA. However, other permissions relevant to the specific businesses, e.g. telecommunication business, and exchange control, etc., will still be required.

### **Next steps**

The DBD is now proposing the Draft to the Cabinet and the Council of the State to seek further consideration. The Draft is expected to be promulgated in the next three (3) months, on which we will keep you updated.

2 The Notification of the National Telecommunications Commission Re: Prescription of Characteristics and Types of Permitted Telecommunications Business of 2019

3 The Notice of the Competent Officer Re: Rules and Practices regarding Treasury Centers of 2010

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