

## Thailand

### Foreign Business Act (1999)

*Unofficial translation*

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# Foreign Business Act

Official Gazette Vol. 116, Part 123a

B.E. 2542 (1999)

Bhumibol Adulyadej, Rex;

Given on the 24th Day of November B.E. 2542;

Being the 54th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to revise the law on foreign businesses;

Whereas it is aware that this Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which section 29, in conjunction with section 35 and section 50 of the Constitution of the Kingdom of Thailand so permits by virtue of provisions of law;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows.

#### **Section 1**

This Act is called the “Foreign Business Act, B.E. 2542 (1999)”.

#### **Section 2**

This Act shall come into force after ninety days as from the date of its publication in the Government Gazette.

#### **Section 3**

There shall be repealed:

1. Notification of the National Executive Council No. 281, dated 24th November B.E. 2515 (1972);
2. Act Amending the Notification of the National dated 24th November B.E. 2515 (1972), B.E. 2521 (1978);
3. Act Amending the Notification of the National dated 24th November B.E. 2515 (1972) (No. 2), B.E. 2535 (1992).

#### **Section 4**

In this Act,

“foreigner” means:

1. a natural person who is not of Thai nationality;
2. a juristic person not registered in Thailand;
3. a juristic person registered in Thailand, being of the following descriptions:
  - a. being a juristic person at least one half of capital shares of which are held by persons under (1) or (2) or a juristic person in which investment has been placed by the persons under (1) or (2) in the amount at least equivalent to one half of the total capital thereof;
  - b. being a limited partnership or a registered ordinary partnership the managing partner or the manager of which is the person under (1);
4. a juristic person registered in Thailand at least one half of the capital shares of which are held by persons under (1), (2) or (3) or a juristic person in which investment has been placed by the persons under (1), (2) or (3) in the amount at least equivalent to one half of the total capital thereof;

For the purpose of this definition, shares of a limited company represented by share certificates issued to bearers are deemed as shares held by foreigners, unless otherwise provided by the Ministerial Regulation.

“capital” means a registered capital of a limited company or a paid-up capital of a public limited company or money invested in a partnership or a juristic person by partners or members thereof;

“minimum capital” means, in the case where the foreigner is a juristic person registered in Thailand, a capital of a foreigner; and means, in the case where a foreigner is a juristic person not registered in Thailand or is a natural person, foreign currencies brought and used by foreigners at the commencement of the operation of businesses in Thailand;

“business” means the operation of an undertaking in the field of agriculture, industry, handicraft, commerce, services or any other undertaking for the purpose of trade;

“licence” means a business operation licence;

“licence grantee” means a foreigner to whom a licence has been granted; “certificate” means a business operation certificate;

“certificate grantee” means a foreigner to whom a certificate has been granted; “Commission” means the Foreign Business Commission;

“competent official” means a person appointed by the Minister to perform activities under this Act;

“Registrar” means the person appointed by the Minister as the Foreign Business Registrar;

“Director-General” means Director-General of the Department of Business

“Minister” means the Minister having charge and control of the execution of this Act.

## **Section 5**

In granting permission to foreigners for the operation of businesses under this Act, regard shall be had to advantageous and disadvantageous effects on national safety and security, economic and social development of the country, public order or good morals, national values in arts, culture, traditions and customs, natural resources conservation, energy, environmental preservation, consumer protection, sizes of undertakings, employment, technology transfer and research and development.

## **Section 6**

The following foreigners may not operate any business within the Kingdom:

1. a foreigner who has been deported or whose deportation is pending;
2. a foreigner entering and staying in the Kingdom without permission under the law on immigration or other laws.

## **Section 7**

The following foreigners may operate businesses upon obtaining a licence from the Director-General and may operate only such businesses, and in such localities, as prescribed in the Notification issued by the Minister with the approval of the Council of Ministers and published in the Government Gazette, provided that in such Notification the Minister may prescribe any conditions as the Minister deems appropriate:

1. a foreigner born in the Kingdom without having Thai nationality under the law on nationality or other laws;
2. a foreigner becoming a foreigner in consequence of the revocation of nationality under the law on nationality or other laws.

The application for a licence, issuance of a licence and a term of a licence shall be in accordance with rules and procedures as prescribed in the Ministerial Regulation.

In the case where the Director-General refuses to grant permission to the foreigner under paragraph one for the operation of businesses, such foreigner has the right to lodge an appeal with the Minister and the provisions of section 20 paragraph one and paragraph three shall apply mutatis mutandis.

### **Section 8**

Subject to section 6, section 7, section 10 and section 12:

1. no foreigner may operate such businesses stricto sensu not permissible to foreigners by special reason, as prescribed in List One;
2. no foreigner may operate such businesses related to national safety or security, businesses having impacts on arts, culture, traditions, customs and folklore handicrafts or businesses having impacts on natural resources or the environment, as prescribed in List Two, unless upon obtaining permission from the Minister with the approval of the Council of Ministers;
3. no foreigner may operate such businesses in respect of which Thai nationals are not yet ready to compete with foreigners, as prescribed in List Three, unless upon obtaining permission from the Director-General with the approval of the Commission.

### **Section 9**

Any amendment or revision of categories of businesses in the Lists annexed hereto shall be by a Royal Decree, save for the businesses in List One or in List Two, Chapter 1, where such amendment or revision shall be by an Act.

The Commission shall consider and review categories of businesses in the Lists annexed hereto at least once every duration of one year as from the date of the entry into force of this Act and shall prepare an opinion for submission to the Minister.

Foreigners operating businesses not prescribed in the Lists annexed hereto prior to the amendment or revision of categories of businesses under paragraph one shall, where such businesses are thereafter specified as the businesses the operation of which requires permission under this Act and such foreigners intend to continue the operation thereof, notify the Director-General in order to obtain a certificate in accordance with the rules and procedures prescribed in section 11.

During the period in which action is taken under paragraph three and a certificate has not yet been obtained, such foreigner shall not be deemed as operating the business without permission under this Act.

### **Section 10**

The provisions of section 5, section 8, section 15, section 17 and section 18 shall not apply to foreigners operating businesses specified in the Lists annexed hereto upon permission granted pro tempore by the Government of the Kingdom of Thailand.

Foreigners operating businesses specified in the Lists annexed hereto by virtue of a treaty to which Thailand becomes a party or by which Thailand is bound in consequence of obligations therefrom shall be exempt from the application of the provisions of the sections specified in paragraph one and shall be governed by the provisions of and conditions set forth in such treaty, which may, inter alia, confer upon Thai nationals or Thai enterprises the right to operate businesses in the countries of nationality of such foreigners as a matter of reciprocity.

#### **Section 11**

Foreigners under section 10 who intend to operate businesses specified in the Lists annexed hereto shall notify the Director-General in accordance with the rules and procedures prescribed in the Ministerial Regulation in order to obtain certificates, and the Director-General shall issue certificates to such foreigners without delay but no later than thirty days as from the date of receipt of their written notification, unless the Director-General considers that the notification is not in accordance with the rules and procedures prescribed in the Ministerial Regulation or that it is not in accordance with section 10, in which case the Director-General shall notify such foreigners thereof without delay but no later than thirty days as from the date of receipt of their written notification.

The certificates shall also indicate conditions prescribed by the Government or prescribed in the treaty.

#### **Section 12**

In the case where the business of the foreigner who is promoted under the law on investment promotion or granted written permission for the operation of the industry or the operation of trade for export under the law on the Industrial Estate of Thailand or under other laws is the business specified in List Two or List Three annexed hereto, such foreigner shall notify the Director-General in order to obtain a certificate. When the Director-General or the entrusted competent official has examined validity of the investment promotion certificate or written permit, the Director-General shall issue a certificate without delay but no later than thirty days as from the date of receipt of the notification of the acquisition of the investment promotion certificate or written permit, as the case may be. In this case, such foreigner shall be exempt from the application of this Act, with the exception of section 21, section 22, section 39, section 40 and section 42, throughout the period in which the business in question is under investment promotion or under permission for the operation of the industry or the operation of trade for export, as the case may be.

The issuance of the certificate under paragraph one shall be in accordance with the rules and procedures as prescribed by the Director-General.

#### **Section 13**

In the case where there exist other laws which govern shareholding, partnership or investment of foreigners, permission or prohibition of the operation of certain businesses vis-à-vis foreigners or which prescribe rules in connection with the operation of businesses of foreigners, such laws shall prevail and the provisions of this Act shall not apply to matters insofar as they are specifically provided by other laws.

#### **Section 14**

The minimum capital to be used by a foreigner for the commencement of the operation of a business in Thailand shall not be less than that prescribed in the Ministerial Regulation, provided that it shall not be less than two million Baht.

In the case where the business of the foreigner under paragraph one is the business requiring permission as specified in the Lists annexed hereto, the minimum capital as prescribed in the Ministerial Regulation for each business shall not be less than three million Baht.

The Ministerial Regulation issued under the provisions of this section may also prescribe the time within which the minimum capital must be brought or remitted into Thailand.

The provisions of this section shall not apply to the case where the foreigner uses money or property derived as revenues from the original business already in operation in Thailand for commencement of another business or for subscribing to shares or investing in any other undertaking or in any other juristic person.

#### **Section 15**

A foreigner which is a juristic person may operate any business specified in List Two only where not less than forty percent of its shares are held by Thai nationals or juristic persons which are not foreigners under this Act, save that, where there is a reasonable cause, the Minister with the approval of the Council of Ministers may reduce the proportion in this matter, provided that the required shareholding must not be less than twenty five percent and that not less than two-fifths of the total number of its directors must be Thai nationals.

#### **Section 16**

A foreigner intending to apply for a licence must have the qualifications and must not be under prohibitions as follows:

1. being of not less than twenty years of age;
2. having a residence in the Kingdom or having been permitted to enter the Kingdom temporarily under the law on immigration;
3. not being an incompetent or a quasi-incompetent person;
4. not being a bankrupt;
5. not having been punished by a court judgment or ordered to pay a fine in settlement of any offence under this Act or under the Notification of the National Executive Council No. 281, dated 24th November B.E. 2515 (1972), unless having been discharged for a period of not less than five years prior to the date of the application for the licence;
6. not having been imprisoned by a court judgment for offences of cheating, cheating creditors, misappropriation or offences related to trade under the Penal Code or the offences related to loans fraudulent to the public or the offences under the law on immigration, unless having been discharged for a period of not less than five years prior to the date of the application for the licence;
7. not having had a licence issued under this Act or under the Notification of the National Executive Council No. 281, dated 24th November B.E. 2515 (1972) revoked within the period of five years prior to the date of the application for the licence.

In the case where a juristic person is an applicant, foreign directors, managers or persons responsible for the operation of such juristic person must also have the qualifications and must not be of any prohibition specified in paragraph one.

#### **Section 17**

In applying for permission for the operation of a business, the foreigner shall file an application to the Minister or the Director-General in accordance with the rules and procedures prescribed in the Ministerial Regulation; and the Council of Ministers, in the case of businesses in List Two, or the Director-General, in the case of businesses in List Three, shall complete the consideration as to whether to give approval or grant permission, as the case may be, within the period of sixty days as from the date of the filing of the application. In the case where, with respect to the consideration by the Council of Ministers as to whether to give approval, there exists an inevitable cause preventing the Council of Ministers from completing its consideration within such period of time, that period may be extended as is necessary, provided that the extension shall not be in excess of sixty days as from the expiration thereof.

When the Council of Ministers has given approval or the Director-General has licence within fifteen days as from the date of the approval by the Council of Ministers or the permission by the Director-General.

In granting permission, the Minister may, with respect to the businesses in List Two, prescribe conditions as prescribed by the Council of Ministers or as prescribed in the Ministerial Regulation issued by virtue of section 18, or the Director-General may, with respect to the businesses in List Three, prescribe conditions as prescribed in the Ministerial Regulation issued by virtue of section 18.

In the case where the Council of Ministers refuses to give approval to a foreigner for the operation of businesses in List Two, the Minister shall, in writing and within thirty days, notify such foreigner of the refusal to give approval and shall also make a clear indication of the reason for such refusal to give approval.

In the case where the Director-General refuses to grant permission to a foreigner for the operation of businesses in List Three, the Director-General shall, in writing and within fifteen days, notify such foreigner of the refusal to grant permission and shall also make a clear indication of the reason for such refusal to grant permission. Such foreigner has the right to lodge with the Minister an appeal against the order refusing to grant permission, and the provisions of section 20 shall apply mutatis mutandis.

#### **Section 18**

The Minister, with the recommendation of the Commission, has the power to issue Ministerial Regulations prescribing any of the following conditions to be observed by foreigners who are licence grantees:

1. the ratio of the capital to loans for the operation of permitted businesses;
2. the number of foreign directors who must have a domicile or residence in the Kingdom;
3. the amount of, and the period of time for maintaining, the minimum capital in the country;
4. technology or property;
5. other necessary conditions.

#### **Section 19**

When it appears that any licence grantee or certificate grantee:

1. violates any conditions prescribed by the Ministers under section 7 paragraph one;



2. fails to comply with any conditions prescribed under section 11 paragraph two or section 17 paragraph three;
3. violates section 15;
4. becomes disqualified or is under any prohibitions under section 16;
5. commits the offence under section 35,

then, in the case of circumstances under (1), (2) and (3), the Director-General person to comply with the conditions under section 7 paragraph one, section 11 paragraph two or section 17 paragraph three or to perform in compliance with section 15, as the case may be, within such time as the Director-General deems appropriate. If the licence grantee or certificate grantee fails to take action as instructed by the Director-General in the written notification without any reasonable cause, the Director-General has the power to give an order suspending the licence temporarily or compelling temporary cessation of the business for a period of time as the Director-General deems appropriate which must not be in excess of sixty days as from the date of the order. If, upon the lapse of such period, the foreigner has not accomplished the action as instructed, the Director-General shall consider giving an order revoking the licence or certificate or making a recommendation to the Minister for considering giving an order revoking the licence, as the case may be.

In the case of circumstances under (4) and (5), the Director-General shall consider giving an order revoking the licence or making a recommendation to the Minister for considering giving an order revoking the licence, as the case may be.

#### **Section 20**

In the case where the Director-General gives an order suspending the licence temporarily or compelling temporary cessation of the business or gives an order revoking the licence or certificate under section 19 paragraph two, the licence grantee or the certificate grantee has the right to lodge with the Minister an appeal in writing within thirty days as from the date of receipt of the notification of the order.

The appeal does not stay the execution of the order given by the Director-General, unless such stay is granted by the Minister with the recommendation of the Commission.

The Minister shall decide on the appeal within thirty days as from the date of the filing of the appeal. The decision of the Minister shall become final.

#### **Section 21**

Subject to section 7, section 19 and section 20, a licence shall be valid for an indefinite period until cessation by the licence grantee of the permitted business. A certificate shall be valid for such period as permitted by the Government of the Kingdom of Thailand or as prescribed by the treaty permitting the operation of the business in question or throughout the period in which the business in question is under investment promotion or under permission for the operation of the industry or the operation of trade for export, as the case may be, unless the certificate grantee ceases to operate the permitted business prior to the expiration of such period, in which case the certificate shall be valid until such cessation.

The licence grantee or the certificate grantee shall display the licence or certificate at an overt location at his place of business.

If the licence or certificate is damaged or lost, an application for a substitute shall be submitted to the Registrar within fifteen days as from the date of the knowledge of the damage or loss.

The application for, and issuance of, licence or certificate substitutes shall be in accordance with the forms and procedures prescribed by the Minister, provided that the time within which substitutes are issued shall not be in excess of thirty days as from the date of receipt of the applications, and such substitutes shall be deemed as valid documents in substitution for the licences or certificates until new licences or certificates are granted.

#### **Section 22**

When a licence grantee or a certificate grantee ceases to operate the business or relocates an office or a place of business, notification of such cessation or relocation shall be made to the Registrar within fifteen days as from the date of such cessation or relocation in accordance with the form and procedures prescribed in the Ministerial Regulation.

#### **Section 23**

There shall be a Foreign Business Commission consisting of the Permanent Secretary for Commerce as Chairperson, a representative of the Office of the National Economic and Social Development Board, a representative of the Office of the Board of Investment, a representative of the Ministry of Defence, a representative of the Ministry of Finance, a representative of the Ministry of Foreign Affairs, a representative of the Ministry of Agriculture and Co-operatives, a representative of the Ministry of Transportation, a representative of the Ministry of Interior, a representative of the Ministry of Labour, a representative of the Ministry of Science and Technology, a representative of the Ministry of Industry, a representative of the Ministry of Education, a representative of the Ministry of Public Health, a representative of the Office of the Consumer Protection Board, a representative of the Royal Thai Police, a representative of the Thai Chamber of Commerce, a representative of the Federation of Thai Industries, a representative of the Thai Bankers' Association and not more than five qualified persons appointed by the Minister as members, and the Director-General of the Department of Business Development shall be a member and secretary.

The qualified persons must possess the knowledge and expertise in economics, law, commerce, science, technology, environment, trade, investment, business administration or industry and must not be advisors to any political party or hold political positions.

The representative under paragraph one, in the case of representing a State agency, must hold office not lower than Director-General or the equivalent and, in case of representing the Thai Chamber of Commerce, the Federation of Thai Industries or the Thai Bankers' Association, must hold office not lower than Director of such Chamber, Federation or Association.

#### **Section 24**

A qualified member shall hold office for a term of two years.

In the case where a member vacates office before the expiration of the term or in the case where the Minister appoints any additional member during the remaining term of the members already appointed, the replacing or additional appointee shall hold office for the remaining term of the members already appointed.

An outgoing qualified member may be re-appointed but may not serve for more than two consecutive terms.

## **Section 25**

In addition to vacating office at the expiration of the term under section 24, a qualified member vacates office upon:

1. death;
2. resignation;
3. being removed by the Minister on the ground of a disgraceful behaviour, lack of integrity, neglect of duties or deficient capability;
4. being a bankrupt;
5. being an incompetent or a quasi-incompetent person;
6. being imprisoned by a final judgment except for an offence committed through negligence or a petty offence;
7. being disqualified or being under any prohibition under section 23 paragraph two.

## **Section 26**

The Commission has the powers and duties as prescribed in this Act and shall have the following powers and duties:

1. to give advice, make recommendations or give opinions to the Minister on the issuance of Royal Decrees and Ministerial Regulations under this Act or the prescription of categories of businesses and localities for businesses to be operated by foreigners under section 7 or requests for the Council of Ministers' approval under section 8 (2);
2. to study, gather and prepare reports on the operation of businesses by foreigners in the Kingdom, including impacts and appropriateness of such matter, for submission to the Minister from time to time but at the frequency of not less than once a year;
3. to give advice, make recommendations or give opinions to the Minister on other matters as entrusted by the Minister.

## **Section 27**

At a meeting of the Commission, the presence of not less than one half of the total number of the members is required to constitute a quorum. If the Chairperson is not present at the meeting or is unable to perform the duty, the members present shall elect one amongst themselves to preside over the meeting.

A decision of a meeting shall be by a majority of votes. In casting votes, each member shall have one vote. In the case of an equality of votes, the person presiding over the meeting shall have an additional vote as a casting vote.

## **Section 28**

The Commission has the power to appoint a sub-committee for considering or performing any particular act entrusted by the Commission, and section 27 shall apply to a meeting of a sub-committee mutatis mutandis.

## **Section 29**

The Department of Business Development, Ministry of Commerce, shall serve as the secretariat of the Commission and shall have the following powers and duties:

1. to perform tasks in accordance with resolutions of the Commission or as entrusted by

the Commission;

2. to consider proposing opinions to the Commission in connection with the operation of foreign businesses in the Kingdom for educational purposes and to gather information and prepare reports for submission to the Minister;
3. to perform general administrative work of the Commission.

### **Section 30**

The Registrar and competent officials have the following powers:

1. to address in writing enquiries or summons requiring any person to give explanations on any facts and furnish documents or evidence necessary for factual examination;
2. to enter premises where foreigners operate businesses during office hours for examining and ensuring the compliance with this Act, provided that written consent of the Director-General shall first be obtained, save in the case of utmost emergency; in the performance of such duties, the Registrar and competent officials shall have the power to inquire into any facts or summon any document or evidence particularly essential for factual examination from persons staying at such premises.

In the performance of duties under (2), the owner or occupier of the premises shall provide the Registrar or competent officials with reasonable assistance. The Registrar or competent officials must not carry out any act which is, in essence, tantamount to the exertion of a threat or a search under the Criminal Procedure Code and must serve not less than three working-day prior written notice on the owner or occupier of the premises, save in the case of utmost emergency and shall, upon completion of the performance of duties, furnish to the Minister a written report on the outcome thereof without delay.

### **Section 31**

When any person makes a request for an examination or reproduction of documents or requests the Registrar to reproduce or make photocopies of documents together with certification thereof or issue certification of statements retained by the Registrar, the Registrar shall grant permission without delay, save that such documents are in essence subject to the requirement of non-disclosure under the law on official information or other laws, provided that the requester must make payment of fees as prescribed in the Ministerial Regulation.

### **Section 32**

The competent official must have an identification card in accordance with the form prescribed in the Ministerial Regulation. In the performance of duties, the competent official must show the identification card to persons concerned.

### **Section 33**

In the performance of duties under this Act, members, the Director-General, the Registrar and competent officials shall be officials under the Penal Code.

### **Section 34**

Any foreigner, to whom a licence or a certificate has been granted, who continues to operate the business after the licence has been suspended or revoked or after the operation of the business to which the certificate relates has been ordered to be ceased without right to appeal or with the Minister giving a final decision mandating the suspension or revocation of the licence or the cessation of the operation of the business, shall be liable to imprisonment for a term not exceeding three years or to a fine of one hundred thousand Baht to one million Baht or to both and to an additional fine at the daily rate of ten thousand Baht throughout the period of the violation.

#### **Section 35**

Any foreigner, to whom a licence has been granted for the operation of any business under this Act, who participates in the operation of the business of another foreigner not permitted to operate the business under this Act or operates the business of which such other foreigner is a co-owner in the manner holding it out as the former's sole business with a view to enabling such other foreigner to circumvent or violate provisions of this Act shall be liable to imprisonment for a term not exceeding three years or to a fine of one hundred thousand Baht to one million Baht or to both, and the Court shall order the cessation of such business participation or operation. In the case of violation of the order of the Court, the violator shall be liable to a fine at the daily rate of ten thousand Baht to fifty thousand Baht throughout the period of the violation.

#### **Section 36**

A Thai national or a juristic person, not being a foreigner under this Act, who assists in or aids and abets or participates in the operation of a foreigner's business specified in the Lists annexed hereto where such foreigner is not permitted to operate that business or who operates the business jointly with a foreigner in the manner holding it out as the former's sole business or who acts as a foreigner's nominee in holding shares in a partnership or a limited company or any juristic person with a view to enabling the foreigner to operate the business in circumvention or violation of the provisions of this Act, or a foreigner who allows such act to be committed by a Thai national or a juristic person that is not a foreigner under this Act, shall be liable to imprisonment for a term not exceeding three years or to a fine of one hundred thousand Baht to one million Baht or to both, and the Court shall order the cessation of the assistance or the aiding and abetting or order the cessation of the joint operation of the business or order the cessation of shareholding or partnership, as the case may be. In the case of violation of the order of the Court, the violator shall be liable to a fine at the daily rate of ten thousand Baht to fifty thousand Baht throughout the period of the violation.

#### **Section 37**

Any foreigner who operates a business in violation of section 6, section 7 or section 8 shall be liable to imprisonment for a term not exceeding three years or to a fine of one hundred thousand Baht to one million Baht or to both, and the Court shall order the cessation of the business operation or the cessation of the undertaking or order the cessation of shareholding or partnership, as the case may be. In the case of violation of the order of the Court, the violator shall be liable to a fine at the daily rate of ten thousand Baht to fifty thousand Baht throughout the period of the violation.

#### **Section 38**

Any foreigner who operates a business in violation of section 14 or violates the conditions under section 18 (3) shall be liable to a fine of one hundred thousand Baht to one million Baht and to an additional fine at the daily rate of ten thousand Baht to fifty thousand Baht throughout the period of the violation.

#### **Section 39**

Any licence grantee or certificate grantee who fails to comply with section 21 paragraph two or paragraph three or violates section 22 shall be liable to a fine not exceeding five thousand Baht.

#### **Section 40**

Any person who fails to comply with a written enquiry or a written summons of the Registrar or the competent official or fails to provide facts or to furnish documents or evidence when so enquired or summoned by the Registrar or the competent official for the purpose of examination or fails to provide assistance to the Registrar or the competent official under section 30 without any reasonable cause shall be liable to a fine not exceeding five thousand Baht.

#### **Section 41**

In the case where a juristic person commits offences under section 34, section 35, section 36 or section 37, directors, partners or persons with the authority to represent the juristic person, who connive at the commission of such offences or fail to take reasonable action in preventing such offences shall be liable to imprisonment for a term not exceeding three years or to a fine of one hundred thousand Baht to one million Baht or to both.

#### **Section 42**

In the case of the offences under section 39 and section 40, the Director-General or the person entrusted by the Director-General shall have the power to settle the offences by way of payment of a fine. Upon payment by the alleged offender of a fine in the amount ordered by the Director-General or the person entrusted by the Director-General within thirty days as from the date of the settlement, the case shall be deemed as terminated by way of such settlement.

#### **Section 43**

All Royal Decrees, Ministerial Regulations, Notifications and Orders which are in force on the date of the entry into force of this Act shall remain in force insofar as they are not contrary to or inconsistent with the provisions of this Act until Royal Decrees, Ministerial Regulations, Notifications and Orders issued under this Act are in force.

#### **Section 44**

Foreigners who have acquired the right or have been permitted to operate businesses under the Notification of the National Executive Council No. 281, dated 24th November B.E. 2515 (1972) prior to the date of the entry into force of this Act shall continue to enjoy the right or be permitted to operate such businesses in accordance with the conditions and the term of the rights or permission so acquired.

#### **Section 45**

Foreigners who, on the date of the entry into force of this Act, have operated businesses specified in the Lists annexed hereto but not specified in the Lists annexed to the Notification of the National Executive Council No. 281, dated 24th November B.E. 2515 (1972) shall, in the event of intending to continue the operation of such businesses, notify the Director-General for obtaining a certificate in accordance with the rules and procedures prescribed in section 11 within one year as from the date of the entry into force of this Act and, during the period in which the certificate has not yet been obtained, such foreigners shall not be deemed as operating the businesses without permission under this Act.

#### Section 46

The Minister of Commerce shall have charge and control of the execution of this Act and shall have the power to appoint the Registrar and competent officials and issue Ministerial Regulations prescribing fees not in excess of the rate annexed hereto, exempting fees and prescribing other acts for the execution of this Act.

Such Ministerial Regulations shall come into force upon their publication in the Government Gazette.

## **Annex**

### **List one. Businesses stricto sensu not permissible to foreigners by special reason**

1. The Press, radio broadcasting station or radio and television station business
2. Rice farming, plantation or crop growing
3. Livestock farming
4. Forestry and timber processing from a natural forest
5. Fishery, only in respect of the catchment of aquatic animals in Thai waters and specific economic zones of Thailand
6. Extraction of Thai medicinal herbs
7. Trading and auction sale of antique objects of Thailand or objects of historical value of the country
8. Making or casting Buddha Images and monk alms-bowls
9. Land trading

### **List two. Businesses related to national safety or security or having impacts on arts, culture, traditions, customs and folklore handicrafts or natural resources and the environment**

## **Chapter I. Businesses related to National Safety or Security**

1. Production, distribution and maintenance of:
  - a. firearms, ammunition, gun powders and explosives;
  - b. components of firearms, ammunition and explosives;
  - c. armaments, ships, aircraft or vehicles for military use;
  - d. equipment or components of all types of war materials
2. Domestic transportation by land, water or air, including domestic aviation

## **Chapter II. Businesses Having Impacts on Arts, Culture, Traditions, Customs and Folklore Handicrafts**

1. Trading of antiques or artistic objects that are artistic works or handicrafts of Thailand
2. Production of wood carvings
3. Silkworm raising, production of Thai silk yarn, weaving of Thai silk or printing of Thai silk patterns
4. Production of Thai musical instruments
5. Production of goldware, silverware, nielloware, bronzeware or lacquerware
6. Production of crockery or porcelains representing Thai arts and culture

## **Chapter III. Businesses Having Impacts on Natural Resources or the Environment**

1. Production of sugar from sugar cane
2. Salt farming, including non-sea salt farming
3. Production of rock salt
4. Mining, including rock blasting or rock crushing
5. Timber processing for production of furniture and utensils

## **List three. Businesses in respect of which Thai nationals are not ready to compete with foreigners**

1. Rice milling and production of flour from rice and economic plants
2. Fishery only in respect of the hatching and raising of aquatic animals
3. Forestry from a grown forest
4. Production of plywood, veneer wood, chipboards or hardboards
5. Production of lime



6. Provision of accounting services
7. Provision of legal services
8. Provision of architectural services
9. Provision of engineering services
10. Construction, with the exception of:
  - a. Construction of structures for delivery of infrastructure public services in the sphere of public utilities or transportation requiring the use of special apparatuses, machines, technology or expertise, with the minimum capital of five hundred million Baht or upwards from foreigners;
  - b. Construction of other types as prescribed in the Ministerial Regulation
11. Brokerage or agency businesses, with the exception of:
  - a. being a broker or an agent in the sale or purchase of securities or in services related to futures trading of agricultural commodities or financing instruments or securities;
  - b. being a broker or an agent in the sale, purchase or procurement of goods or services necessary for the production or the provision of services amongst affiliated enterprises;
  - c. being a broker or an agent in the sale or purchase, procurement, distribution or acquisition of domestic and foreign markets for the distribution of domestically manufactured or imported goods, which is in character the operation of international trade, with the minimum capital of one hundred million Baht or upwards from foreigners
  - d. being a broker or an agent of other types as prescribed in the Ministerial Regulation
12. Sale by auction, with the exception of:
  - a. a sale by auction which, in character, involves international bidding of items other than antiques, objects of antiquity or artistic objects that are artistic works or handicrafts or objects of antiquity of Thailand or of historical value of the country;
  - b. sales by auction of other types as prescribed in the Ministerial Regulation
13. Internal trade related to traditional agricultural products or produce not yet prohibited by law
14. Retail sale of goods of all types with the total minimum capital in the amount lower than one hundred million Baht or with the minimum capital of each store in the amount lower than twenty million Baht
15. Wholesale of all types with the minimum capital of each store in the amount lower than one hundred million Baht
16. Advertising business
17. Hotel business, with the exception of the hotel management service
18. Guided touring
19. Sale of food and beverages
20. Cultivation, propagation or development of plant varieties

21. Other service businesses, with the exception of service businesses as prescribed in the Ministerial Regulation

## **Note**

The reason for the promulgation of this Act is as follows. Whereas the Notification of the National Executive Council No. 281, dated 24th November B.E. 2515 (1972) which is currently in force has been in force for a considerable period of time and contains certain principles inconsistent with circumstances in economy, investment and international trade of the present time, it is expedient to revise the said law with a view to promoting competition in business operation both at domestic and international levels, which will be of value to Thailand as a whole, and thereby putting in place the implementation of obligations under international treaties as well. It is therefore necessary to enact this Act.

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