

Legal Update

🇹🇹 REQUIREMENT FOR BRINGING OR REMITTANCE OF MINIMUM CAPITAL INTO THAILAND UNDER THE FOREIGN BUSINESS ACT B.E. 2542 (A.D. 1999)

The Ministerial Regulation (No. 3) ("**Ministerial Regulation**") has been issued to amend the period to bring or remit the minimum capital into Thailand as required under the Foreign Business Act ("**FBA**") by extending the period for the remittance of minimum capital by the foreigners pursuant to bilateral treaties to be within 30 August 2019.

According to the Ministerial Regulation, effectively from 30 August 2009 ("**Effective Date**"), a foreigner operating business in Thailand pursuant to a treaty which Thailand is a party or has an obligation to provide the exceptional rights to nationals of the counterparty as exchange of consideration ("**Treaty**") and having any of the following characteristics, shall bring or remit minimum capital in foreign currency into Thailand within 30 August 2019:

- i) The foreigner, either a natural or juristic person which is not registered in Thailand;
- ii) The foreigner, which is a juristic person registered in Thailand, but its existing minimum capital is not reached the requirement on the date of commencing the business operation or the date of receiving the certificates; or
- iii) The foreigner who has already operated business in Thailand under a treaty prior to the Effective Date but its existing minimum capital of such foreigner is not yet reached the requirement.

Remark: The requirement on the minimum capital that the foreigner pursuant to the Treaty shall comply with in order commence a business in Thailand in compliance with FBA shall be as follows:

- 1) For the business which is not required to obtain the license under FBA - Not less than Baht Two Million. .
- 2) For the business which is required to obtain the license under FBA - Not less than 25 percent of the average estimated annual expenditures for each business operation over three years, provided that in any case, the minimum capital shall not be less than Baht Three Million for each business.

Source: <http://www.ratchakitcha.soc.go.th> – September 2009

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THE ADMINISTRATIVE COURT'S ORDER IN RELATION TO 76 INDUSTRIAL PROJECTS IN MAP TA PHUT AND NEARBY AREAS IN RAYONG

The Central Administrative Court issued a temporary injunction suspending the operating permit of 76 industrial projects in Map Ta Phut and nearby areas in Rayong.

Environmental groups and local people in Rayong have filed complaints against state agencies and several ministries for negligence of performing their duties and failing to properly issue the operating licenses which severely affect to the health and environment of communities and violate to Article 67 of the current Constitution.

Article 67 of the current Constitution requires a study of health-impact assessment (HIA), public consent and approval from the independent environment body. Until now, no independent environment body has been established for this purpose yet.

The Central Administrative Court on 29 September 2009 ordered the suspension of 76 industrial projects' operation temporarily until the final judgment is issued or the Court modifies the order except (i) the projects so obtained the license prior to the effective date of the current Constitution and (ii) the projects which are not required to prepare the Environment Impact Assessment (EIA) under the announcement of Ministry of Natural Resources and Environment dated 16 June 2009.

On 2 October 2009, the Office of the Attorney-General, appointed from the Government and National Environment Board, filed an appeal against the Central Administrative Court's injunction with the Supreme Administrative Court. There are two issues for the Court's consideration i.e. (i) seeking a reversal of the Central Administrative Court's injunction by dismissing a temporary injunction and (ii) extinction of the Central Administrative Court's order for the suspension of 76 industrial projects' operation in Map Ta Phut and nearby areas in Rayong.

Among these 76 projects, several projects belong to foreign companies. Thus, such injunction will probably affect to the foreign investor's confidence in Thailand.

Source: <http://www.nationmultimedia.com>; <http://www.bangkokpost.com>; <http://www.thairath.co.th>;
<http://www.komchadluek.net> – September and October 2009

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