

Topics October 2024

Foreign Business Certificate (FBC) and Foreign Business License (FBL)

Currently, a manufacturing company with significant Japanese capital operating as a contract manufacturer in Thailand is under investigation by the Economic Crime Suppression Division (Royal Thai Police). However, according to officials from the Department of Business Development (DBD), this issue is not limited to Japanese-owned companies but appears to apply to foreign-owned companies in general.

The purpose of the law in question is to regulate foreign companies to protect Thailand's industries by imposing certain restrictions on foreign-invested companies and requiring them to obtain a permit before commencing operations. The maximum penalty for violating this law is imprisonment for up to three years and a fine of up to THB 1,000,000 (approximately THB 4,500,000 based on the exchange rate as of 30 November 2023, THB 1 ≈ 4.5), as stipulated in Article 37 of the Foreign Business Act B.E. 2542 (1999).

It is important to note that criminal penalties, as described above, are provided under the Act, which will be discussed further below.

In general, manufacturing businesses are not prohibited under the Foreign Business Act B.E. 2542 (1999). Thus, Japanese companies operating in manufacturing in Thailand can typically invest as fully foreign-owned entities. However, special consideration should be given to cases such as contract manufacturing, mold making, metal plating, and metal finishing, as these activities are generally not regarded as manufacturing but rather as "service activities". These activities are classified under List 3 (21) of the Foreign Business Act and are subject to the supervision of the DBD of the Ministry of Commerce.

As a result, manufacturing companies with more than 50% foreign investment engaged in these service activities are required to obtain a permit before commencing operations. Even companies that have obtained a BOI certificate for manufacturing activities from the Board of Investment of Thailand (BOI) must still apply for a Foreign Business Certificate (FBC) with the DBD, Ministry of Commerce, under Section 12 of the Foreign Business Act B.E. 2542 (1999). This requirement is often overlooked and should be monitored carefully.

Furthermore, factories located in industrial estates under the jurisdiction of the Industrial Estate Authority of Thailand (IEAT) may also apply for a Foreign Business Certificate (FBC) with the DBD, Ministry of Commerce, under Section 12 of the Foreign Business Act, even if they do not possess a BOI certificate.

In contrast, companies with more than 50% foreign investment operating as contract manufacturers (i.e., engaged in hire-of-work contracts) without BOI promotion and not situated in an IEAT-regulated industrial estate must apply for a Foreign Business License (FBL)

with the DBD under Section 17 of the Foreign Business Act B.E. 2542 (1999). The process for obtaining an FBL is more complex than that for obtaining an FBC.

As previously mentioned, non-compliance with the Foreign Business Act can result in criminal penalties, and in practice, many cases have escalated to criminal investigations. The Revenue Department has a unit dedicated to criminal prosecutions; however, the DBD does not. Additionally, the police are not required to disclose the identity of the whistleblower, leading to an ambiguous situation in criminal matters.

However, based on our experience and research, very few cases actually result in prosecution. In most instances, the police do not refer the case to the prosecutor's office, or, if they do, the prosecutor's office declines to pursue it.

Japanese management and expatriates often become anxious when summoned by the police. One complicating factor is that many law firms generally trusted by the business community do not handle criminal cases, which can be quite concerning. Additionally, it is not uncommon to hear various accounts from police officers. As noted earlier, it is strongly recommended to remain calm, as actual prosecutions are relatively rare.