

Ministry of Commerce Relaxing the Time Period for Foreign Entities under Treaty Protection for Bringing or Remitting Minimum Capital into Thailand for Another 10 Years

The Ministry of Commerce (“**MOC**”) recently issued the new regulation with respect to the time period for bringing or remitting the minimum capital into Thailand (“**Ministerial Regulation No. 3**”) to amend the provisions concerning the same matter stipulated in the previous Ministerial Regulation No 2, which came into force on 30 August 2004 (“**Ministerial Regulation No. 2**”).

According to the Foreign Business Act B.E. 2542 (1999) (“**FBA**”), the MOC generally prescribes the time period and the minimum capital to be brought or remitted into Thailand for the commencement of the business operation in Thailand by foreign investors. The Ministerial Regulation No. 2 stated that a foreign investor operating the restricted business (as classified in the lists attached to the FBA) under the treaty to which Thailand is a party (“**Foreign Investors under Treaty Protection**”) must bring or remit the minimum capital into Thailand within five years from the date such ministerial regulation came into force.

The Ministerial Regulation No. 3 set forth the provisions extending the time period for bringing or remitting the minimum capital into Thailand **for the Foreign Investors under Treaty Protection** for another 10 years, which can be summarized as follows:

Minimum Capital to be Brought or Remitted into Thailand within 15 Years from 30 August 2004 by the Foreign Investors under Treaty Protection

Foreign investors operating business in Thailand, including foreign investors who obtain foreign business licenses for engaging in the restricted business under the FBA or operate their business in Thailand by virtue of the treaty to which Thailand is a party, are subject to the requirement for bringing or remitting into Thailand the minimum capital, i.e. at least two million baht or three million baht, as the case may be, within the time period prescribed by the relevant ministerial regulation.

Generally, foreign investors engaging in the restricted business by obtaining foreign business licenses under the FBA, shall bring or remit the required minimum capital into Thailand in full within three years from the date the relevant approval is granted to such foreign investors. In 2004, the MOC granted relaxations for the Foreign Investors under Treaty Protection to bring or remit the required minimum capital into Thailand within five years from the date the Ministerial Regulation No. 2 came into force (i.e. 30 August 2004).



Recently in 2009, the MOC provided further relaxations through the Ministerial Regulation No. 3, which generally extends such time period for another 10 years. Under the Ministerial Regulation No. 3, the relaxation has been provided to the Foreign Investors under Treaty Protection **who operate the restricted business** (as classified in the lists attached to the FBA) in Thailand and the Foreign Investors under Treaty Protection **incorporated in Thailand**, who operate the restricted business (as classified in the lists attached to the FBA), to bring or remit the required minimum capital into Thailand **within 15 years from 30 August 2004**.

Minimum Capital to be Brought or Remitted into Thailand within 10 Years from 30 August 2009 by the Foreign Investors under the Treaty Protection who fails to fulfill the requirements under the law

For the Foreign Investors under Treaty Protection who operate the restricted business (as classified in the lists attached to the FBA) prior to the date this Ministerial Regulation No. 3 came into force, but **have not yet fulfilled** the requirement for bringing or remitting the minimum capital into Thailand as required by the law, this Ministerial Regulation No. 3 has granted relaxation to the said foreign investors to bring or remit the required minimum capital into Thailand within 10 years from the date this Ministerial Regulation No. 3 came into force, i.e. **within 10 years from 30 August 2009**.

Conclusion

The Ministerial Regulation No. 3 has granted relaxations to the Foreign Investors under Treaty Protection in terms of the period to bring or remit the required minimum capital into Thailand under the FBA. However, it should be noted that the Ministerial Regulation No. 3 does not grant relaxation to foreign investors who obtain the foreign business license without any benefit or protection under the treaty to which Thailand is a party. In that case, such foreign investors are still required to bring or remit the minimum capital into Thailand in full within three years as from the date the relevant approvals are granted to them.

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