

CATEGORY 3

Guidelines of Consideration on the Permission for Foreign Business Operation in the category of Services or Other Businesses with Public Sector or State-Owned Enterprises

The operation of service business or other businesses with the public sector or state-owned enterprises is the operation of business under the business listed in Annex 3 attached to the Foreign Business Act B.E.2542, such as engineering service, construction, service in a turnkey project, or other services for instance. If the foreigner wishes to operate such business, the permission by the Director-General, Business Development Department with the approval of the Foreign Business Committee is required.

In consideration on approval, the Foreign Business Operation Committee has determined the guidelines as follows:-

1. Characteristic of Business

The foreign juristic person who operates a service business or other businesses with a public sector or a State-owned enterprise must have all 3 characteristics as follows:-

- 1) Being a juristic person established under the foreign law and entered the Kingdom in order to operate the business in Thailand or, being a juristic person established under the Thai law and has a foreign status;
- 2) Entering into Thailand for the purpose of operating a service or other business with:
 - The public sector;
 - A state-owned enterprise;
 - A private sector that is a contracting party to the public sector or state-owned enterprise.
- 3) Having a hire of work agreement or a sale and purchase agreement of which that juristic person is specified as a contracting party with:
 - The public sector;
 - A state-owned enterprise;
 - A private sector that is a contracting party to the public sector or state-owned enterprise.

1. Scope of Business

The operation of business with the public sector or state-owned enterprises comprises of a service business or other category of business whereby the scope of business must be clearly specified in the hire of work agreement or the sale and purchase agreement. The examples of businesses operated with the public sector or state-owned enterprises are as follows:-

- 1) Engineering service - Annex 3(9);

- 2) Construction – Annex 3(10);
- 3) Service business in a turnkey project – Annex 3(21);

Service business in a turnkey project is a type of service that has a defined format and scope of works which cover exploration, design and ascending to completed construction, including repair and maintenance during the initial stage of the project, carried out solely by the Contractor, whether a sole juristic person or Joint Venture or a Consortium, such as contracted design together with construction. In case where the Contractor is a Joint Venture or a Consortium, each company shall apply for the Foreign Business License individually.

- 4) Other service businesses – Annex 3(21)

Either a particular service or multiple services such as:

- Consultancy and advisory service for various matters;
- Procurement and installation of equipment, machineries and devices;
- Service in improvement, modification, installation and training of staff in relation to the operational system
- Repair and maintenance service for devices, machineries and equipment;
- Commissioning test services of production platform.

- 5) Other businesses

Other businesses operated, such as retail sale of goods that the public sector utilizes for the infrastructure project.

2. Information and Supplementary Documents for the Consideration

In consideration on approval of service business or other businesses with the public sector or State-owned enterprises, the Foreign Business Committee will consider the details of information in the application for the license together with the supplementary documents according to the scope of services or business with the public sector or state-owned enterprise as follows:-

3.1 Engineering Service

3.1.1 Business Descriptions are as follows:

A service in engineering provided with respect to consultancy, design of structural detail or project systems such as giving advice for purpose of supervision of the construction and commissioning test of transportation system project for a state-owned enterprise and, giving engineering advice for the design of the track for the electric train project to a private company who is a contracting party with the state-owned enterprise, and supervision and inspection of the operational system installed at an

airport provided to a private company which is a contracting party with the state-owned enterprise.

3.1.2 The information contained in the Application seeking for permission must demonstrate the following characteristics:

- Must be a service that uses high technology and requires specific skill and expertise to which the transfer of such technology would be beneficial to the Thai people, such as technology or skills relevant to the design of the system and structure of the track of the electric train;
- Must be a service that is relevant to the infrastructure system which facilitate the economic and social development, such as mass transit project and airport;
- Must be beneficial to the industrial operator, such as petroleum or energy, aviation, communication, and transportation;
- Must be a service comprising of a hire of work agreement whereby the scope of service, conditions, working period and name of the contracting parties must be prescribed.

3.1.3 The Supplementary Documents of the Application

- Copy of certification document or the evidence for being the juristic person including the business objectives;
- Copy of the hire of work agreement or the sale and purchase agreement, by submitting only the parts containing the information relating to the application and having the following details:-
 - Name of the employer and the contractor together with the signatures of the authorized persons and the date of the signing of the agreement;
 - Name, number and date of the agreement;
 - Date of commencement and date of expiration of the agreement;
 - Scope of works under the agreement; and
 - In case of multiple contractors, the distribution and ratio of duties and responsibilities under the agreement.
- In case where the applicant is a contracting party with a private company which is a contracting party with the public sector or state-owned enterprise and, where the hire of work agreement or the sale and purchase agreement does not specified the name of such public sector or state-owned enterprise, the applicant must submit the Certified Employment Letter that was issued by the private company which is the contracting party with the public sector or state-owned enterprise whereby such Letter must specify the name of the public sector or the State-owned enterprise who is the contracting party with the private company.

In order to facilitate the License applicant in the event where the hire of work agreement between the employer and the applicant has not

been executed, the applicant may submit the Certified Employment Letter issued by the employer and addressed to the Director-General of the Department of Business Development, or other evidence showing that the applicant will be contracted, or is the awarded bidder of the work, with the public sector or state-owned enterprise or the private company who is a contracting party with the public sector or the state-owned enterprise. Upon the execution of the hire of work agreement, the copy of the agreement must be submitted to the Department of Business Development prior to the issuance of the Business License.

- The Certified Employment Letter issued by the employer to the Director-General, Department of Business Development shall contain the following particulars:-
 - Name of the project or the contracted works;
 - Name of the Contractor (the License Applicant);
 - Date of commencement and date of expiration of the project;
 - Project value; and
 - Name of the public sector agency or the State-owned enterprise who is the contracting party (in case where the Applicant is a contracting party with a private company who is a contracting party with the public sector or the state-owned enterprise).

3.2. Construction

3.2.1 Business Descriptions are as follows:

- A service provided with respect to construction of structure, building or other establishments, such as the construction of underground tunnels for electricity distribution lines, the construction of the elevated high way, and the construction of natural gas pipeline system in the sea for state-owned enterprise.

3.2.2 The information contained in the Application seeking for permission must demonstrate the following characteristics:

- Must be a service that uses high technology and requires specific skill and expertise to which the transfer of such technology would be beneficial to the Thai people, such as skills regarding the construction and installation of the offshore gas pipeline;
- Must be a service that is relevant to the infrastructure system which facilitate the economic and social development, such as electricity distribution system development project and construction of the transportation system project;
- Must be beneficial to the industrial operators, such as petroleum or energy, and transportation; and

- Must be a service comprising a hire of work agreement whereby the scope of service, conditions, period of work and name of the contracting parties must be prescribed

3.2.3 The Supplementary Documents of the Application

- The supplementary documents are similar to those prescribed for the Engineering Service.

3.3 Service Business in a Turnkey Project

3.3.1 Business Descriptions are as follows:

- A service that has a defined format and scope of works which cover exploration, design and ascending to completed construction, including repair and maintenance during the initial stage of the project, carried out solely by the Contractor, whether a sole juristic person or Joint Venture or a Consortium, where the contracted works may include a combination of design and construction, such as design, procurement of materials and equipments, construction, assemble, installation and commissioning test of production system of construction project of the model bio-diesel production plant for a state-owned enterprise, and the design, procurement, construction, installation, commissioning test, repair and maintenance of gas separation plant for a state-owned enterprise.

3.3.2 The information contained in the Application seeking for permission must demonstrate the following characteristics:

- Must be a service that uses high technology and requires specific skill and expertise to which the transfer of such technology would be beneficial to the Thai people, such as knowledge regarding the bio-diesel production or design of the gas separation plant;
- Must be a service that is relevant to the infrastructure system which facilitate the economic and social development, such as endorsement on the use of substitute energy;
- Must be beneficial to the industrial operators, such as petroleum or energy; and
- Must a service comprising a hire of work agreement whereby the scope of service, conditions, period of work and name of the contracting parties must be prescribed

(In case where the Contractor is a Joint Venture or a Consortium, each company shall apply for the Foreign Business License individually.)

3.3.3 The Supplementary Documents of the Application

- The supplementary documents are similar to those prescribed for the Engineering Service.

3.4 Other Service Businesses

3.4.1 Business Descriptions are as follows:

- A service provided with respect to a particular category or multiple categories, i.e. consultancy and advisory service for various matters, procurement and installation service of devices, machineries and equipments, improvement, modification, installation and training of staff in relation to the operational system, repair and maintenance service of devices, machineries and equipments, commissioning test service of production platform. For example, a consultancy service in planning for a telecommunication venture intended for the public sector, procurement and installation service of electricity distribution lines for the state-owned enterprise, and a consultancy service regarding the software used in airport to the private company who is a contracting party with the public sector and state-owned enterprise.

3.4.2 The information contained in the Application seeking for permission must demonstrate the following characteristics:

- Must be a service that uses high technology and requires specific skill and expertise to which the transfer of such technology would be beneficial to the Thai people, such as technology relevant to the installation or use of software in airports;
- Must be a service that is relevant to the infrastructure system which facilitate the development of the economy and society, such as telecommunication system and transportation system;
- Must be beneficial to the industrial operators, such as aviation industry, telecommunication and communication; and
- Must be a service comprising a hire of work agreement whereby the scope of service, conditions, period of work and name of the contracting parties must be prescribed

3.4.3 The Supplementary Documents of the Application

- The supplementary documents are similar to those prescribed for the Engineering Service.

3.5 Other Businesses

3.5.1 Business Descriptions are as follows:

- Other businesses under the agreement which entered into with the public sector or state-owned enterprise such as retail sale of goods for the emergency telephone system on express ways for a state-owned enterprise.

3.5.2 The information contained in the Application seeking for permission must demonstrate the following characteristics:

- Must be goods that use high technology and require specific skill and expertise, such as specifically designed goods, for use in conjunction with the system implemented by the public sector or the state-owned enterprise;
- Must be retailing or wholesaling of goods relevant to the infrastructure which facilitate the economic and social development such as the traffic supporting goods;
- Must be retailing or wholesaling of goods having sale and purchase whereby the scope of work, conditions and the name of the contracting parties must be prescribed

3.5.3 The Supplementary Documents of the Application

- The supplementary documents are similar to those prescribed for the Engineering Service.

4. The Conditions to be Complied by the Foreign Juristic Person Operating the Service Business or Other Businesses with the Public Sector or the State-Owned Enterprise after the Approval; divided into 2 categories:

4.1 In case where the approval is granted to operate the service business or other businesses with the public sector or State-owned enterprise:

- 4.1.1 There must be the minimum capital to be remitted to Thailand for the commencement of business operation as stipulated by law, which shall not be less than Baht Three Million;
- 4.1.2 There must be the submission of document or evidence in relation to the operation of the permitted business when the official sent the summon or inquiry;
- 4.1.3 There must be the preparation of account and financial statements to be submitted to the Business Development Department.

4.2 In case where the approval is granted to operate the service business or other businesses with a private company who is a contracting party with the public sector or State-owned enterprise:

- 4.2.1 There must be the minimum capital to be remitted to Thailand for the commencement of business operation as stipulated by law, which shall not be less than Baht Three Million;
- 4.2.2 The total loan for the permitted business operation must not exceed seven times of the inward remitted fund for the permitted business operation;

(Loan means the total liabilities of the business, notwithstanding the liabilities incurred by any form of transaction but excluding trade

liabilities incurred in the ordinary course of business, such as, trade creditors, accrued expenses)

- 4.2.3 At least one person of the responsible persons for operating the business in Thailand must have a domicile in Thailand;

(Domicile means the contactable residence in Thailand which can be the place of business, excluding temporary residence such as hotels)

- 4.2.4 The document or evidence relating to the permitted business operation must be submitted when the official sent the summon or inquiry;

- 4.2.5 There must be the preparation of account and financial statements to be submitted to the Business Development Department.

5. Representation of the Applicant

In submission of the Application for permission for the service business operation for the public sector or a state-owned enterprise, the authorized director or the responsible person for the business operation in Thailand on behalf of the juristic person in foreign country must sign to certify the accuracy of information specified in the Application and the supplementary documents and evidence.
