

29 June 2018

Control v 3.6

FOREIGN BUSINESS ACT – UNLOCKING THE ECONOMY

The European Association for Business and Commerce (EABC) is a registered Trade Association in Thailand. It was established as a consortium with sixteen Business Organizations and Chambers of Commerce in Thailand and Europe. In Thailand those chambers and similar organisations have some 2,000 members. With strong support from the European Union, EABC interacts as the unified voice of European business aiming to contribute towards the improvement of trade and investment in Thailand fostering stronger business co-operation between Europe and Thailand.

Due to recent public commentary about the Foreign Business Act, EABC is appreciative of the opportunity to provide recommendations about the Foreign Business Act, in the interests of achieving a number of outcomes which we describe in this submission. All EABC published position papers have recommended the selective removal, over time, of items from List 3 of the Foreign Business Act, the 2018 European Business Position Paper included.

We commend the Royal Thai Government on initiatives such as the EEC which through various incentives and focus, is stimulating investment in ways that should transform the economy. We also congratulate the Thai Government on her efforts to enhance 'Ease of Doing Business' (with an enhanced status in the World Bank 'Doing Business' rankings) which is such an important part of attracting and retaining investment.

Thailand's competitiveness ranking in the IMD Competitiveness index, however, has dropped in 2018 three places (27th to 30th out of 63). Opening up more sectors, especially services, would assist in improving this ranking and could help promote the grand vision of Thailand 4.0.

In order to keep abreast with neighbouring countries which have already successfully negotiated various FTA's covering those sectors in which Thai businesses are thought "not ready to compete", Thailand needs to consider a new package and fresh trade-in-services strategies. Thailand must avoid at all costs the trade and investment diversion of her prominent and successful global value chains (GVCs) – for example in goods: the automotive value chain, and in services: hospitality and tourism.

If sectors don't allow transfer of new technologies or new service industry paradigms in a global environment of ever-changing comparative advantages, they are not likely to ever get ready to compete. Such sectors will always be behind the rest of the world or preserved eternally in their original forms. Thailand will be outcompeted and will never get out of the "middle income trap".

Getting ready requires retooling by opening up for modernization and competition, welcoming those companies which can help train Thai firms to deliver world class services and products and also get Thai companies up to speed in areas where in the past they may not have been competitive. Thus, competition should not be shunned, rather many sectors and companies would do well from competition.

The underpinnings of the FBA date back to the early 1970s, almost two generations ago. Since then, significant educational and economic modernization has occurred and it would appear that Thai companies in many industries are not only ready to compete and to do well, but can likely achieve world class success.

To build on these already positive developments, and considering the challenges ahead, we seek to make serious and well-meaning proposals about the Foreign Business Act which in our view are essential to unlocking the economy. Our belief and recommendations are guided by five Driving Strategies which directly support or are the same as important government policies:

- 1) **Thailand 4.0** is a bold vision which will transform the economy but will require skills that focus on new activities and industries, and being digital at all levels. The resources for this cannot possibly come from within Thailand alone. The 10 'S' curve industries are one aspect of this.
- 2) **Ease of Doing Business** proposes the need for systematically and surgically cutting down various existing government regulatory and bureaucratic processes, many of which would appear to be redundant and costly. EABC welcomes measures to improve doing business generally. The 'guillotine' project for example should bring positive outcomes. A review of lists in the FBA provides an opportunity to continue contributing to enhanced 'doing business'.
- 3) **Thailand promoted as a hub** and a base for the physical production of goods, manufacturing, and services (including those services, such as education, logistics and others, supporting manufacturing and goods). This would build on Thailand's geographical centrality. Many service activities are needed to support this model.
- 4) **Thailand promoted as a centre of innovation and creativity**, which would build capacity, help re-skill the workforce, transfer knowledge and build knowhow, and create higher-end jobs. A 'Made in Thailand' branding for this enterprise, and leading edge, high quality products and services would support this strategy.
- 5) **Service Sector liberalization**. Although manufacturing of goods was liberalized to great success some decades ago, services liberalization has unfortunately stalled. All leading world economists have recommended service sector liberalization to avoid the middle income trap. It stimulates innovation and creativity, as well as enhancing competitiveness of the economy as a whole.

We are aware of other non-Ministry of Commerce laws and regulations dealing with restrictions on foreigners doing certain jobs, on visas, work permits, and other job-related

issues. However, in this letter we will limit our focus in good faith to the Ministry of Commerce Foreign Business Act, specifically about items in the Lists.

Our Recommendations are about the Foreign Business Act

We confine ***our recommendations*** to the Lists in the Foreign Business Act. Attached in Annex A are our recommendations on List 3. We also include some (limited) observations and recommendations about Lists 1 and 2. In Annex B we provide recommendations about item 21 of List 3.

Narrowing of investment by changing FBA language

We also refer to recent press commentary (Bangkok Post 21 March “FBA upgrades under review” and Bangkok Post 26 March “Service industry may open up to foreigners”).

These press reports included suggestions that steps were afoot to consider revisions of the FBA in order to tighten definitions so as to possibly make them more restrictive.

There are currently many government promotions in Thailand which are designed to attract foreign investment (and specifically foreign investment of the right kind) which would seem not to sit well with the idea of introducing greater restrictions. We thus *recommend* not changing the language in the text body of the FBA concerning how the law defines ownership or being foreign.

Next steps

EABC welcomes a dialogue on the FBA.

EABC
29 June 2018

Annex A – Lists in the FBA

LIST ONE

The businesses not permitted for aliens to operate due to special reasons:

Item	Description	Recommendation
(1)	Newspaper business, radio broadcasting or television station business	Technologies in on-line multicasting and broadcasting have changed; a review is recommended on how the industry now works
(2)	Rice farming, farming or gardening.	Review which aspects of Farming will benefit from liberalisation. Smart Farming and many agricultural activities are promoted by BOI.
(3)	Animal farming	
(4)	Forestry and wood fabrication from natural forest	
(5)	Fishery for marine animals in Thai waters and within Thailand specific economic zones.	
(6)	Extraction of Thai herbs.	
(7)	Trading and auctioning Thai antiques or national historical objects.	
(8)	Making or casting Buddha images and monk alms bowls.	
(9)	Land trading	

LIST TWO

The businesses related to the national safety or security or affecting arts and culture, tradition, folk handicraft or natural resource and environment.

Group 1: The businesses related to the national safety or security	
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(1)	Production, selling, repairing and maintenance of: (a) firearms, ammunition, gun powder, explosives. (b) Accessories of firearms, ammunition, and explosive (c) Armaments, ships, air-crafts or military vehicles. (d) Equipment or components, all categories of war materials.	If repair and maintenance of aircraft refers to civil aviation, it is noted that MRO (maintenance, repair, operation) is a promoted activity for the EEC. If this Group 1 (1) is only about military equipment, that promotion may not apply.
(2)	Domestic land, waterway or air transportation, including domestic airline business.	Recently introduced additional non FBA standard restrictions apply to AOL. We recommend that group 1 (2) should be reviewed within say 12 months to support liberalization.
Group 2 : The businesses affecting arts and culture, traditional and folk handicraft:		
(1)	Trading antiques or art objects being Thai arts and handicraft.	
(2)	Production of carved wood.	
(3)	Silkworm farming, production of Thai silk yarn, weaving Thai silk or Thai silk pattern printing.	
(4)	Production of Thai musical instruments.	
(5)	Production of goldware, silverware, nielloware, bronzeware or lacquerware.	
(6)	Production of crockery of Thai arts and culture.	
Group 3: The businesses affecting natural resources or environment:		
(1)	Manufacturing sugar from sugarcane;	
(2)	Salt farming, including underground salt;	
(3)	Rock salt mining;	
(4)	Mining, including rock blasting or crushing;	

(5)	Wood fabrication for furniture and utensil production	
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LIST THREE

Business where Thai entities are not ready to compete

	Activity	Recommendation
(1)	Rice milling and flour production from rice and farm produce	
(2)	Fishery, specifically marine animal culture.	
(3)	Forestry from forestation.	
(4)	Production of plywood, veneer board, chipboard or hardboard.	
(5)	Production of lime.	
(6)	Accounting service business.	Recommend remove from List 3
(7)	Legal service business.	
(8)	Architecture service business.	Recommend remove from List 3
(9)	Engineering service business.	Recommend remove from List 3
(10)	Construction, except for: (a) Construction rendering basic services to the public in public utilities or transport requiring special tools, machinery, technology or construction expertise having the foreigners' minimum capital of 500 million Baht or more. (b) Other categories of construction as prescribed by the ministerial regulations.	
(11)	Broker or agent business, except: (a) Being broken or agent for underwriting securities or services connected with future trading of commodities of financing instruments or securities.	

	(b) Being broker or agent for trading or procuring goods or services necessary for production or rendering services amongst affiliated enterprises. (c) Being broker or agent for trading, purchasing or distributing or seeking both domestic and foreign markets for selling domestically manufactured or imported goods in the manner of international business operations having the foreigners' minimum capital 100 million Baht or more. (d) Being broker or agent of other category as prescribed by the ministerial regulations.	Recommend deleting "having the foreigners' minimum capital 100 million Baht or more".
(12)	Auction, except: (a) Auction in the manner of international bidding not being the auction of antiques, historical artifacts or art objects which are Thai works of arts, handicraft or antiques or having the historical value. (b) Other categories of auction as prescribed by the ministerial regulations.	
(13)	Internal trade connected with native products or produce not yet prohibited by law.	
(14)	Retailing all categories of goods having the total minimum capital less than 100 million Baht or having the minimum capital of each shop less than 20 million Baht.	Recommend remove from List 3
(15)	Wholesaling all categories of goods having minimum capital of each shop less than 100 million Bath.	Recommend remove from List 3
(16)	Advertising business.	Recommend remove from List 3

(17)	Hotel business, except for hotel management service	Recommend remove from List 3
(18)	Guided tour.	
(19)	Selling food or beverages.	
(20)	Plant cultivation and propagation business.	
(21)	Other categories of service business except that prescribed in the ministerial regulations	Recommend deletion of item 21, noting some specific activities which have been removed for the avoidance of doubt.

Annex B – about List 3 item 21

In applying the five Guiding Strategies, our recommendation is to remove item 21 from List 3. The logic is that unlocking services is very important and other Driving Strategies mandate it.

Here in this Annex B, for information we have grouped important activities about item 21:

FIRST GROUP

Many quite specific items have been removed by Decrees in 2013, 2016 and 2017. The effect is in many respects liberalization-neutral due to sector-specific legislation in those sectors.

SECOND GROUP

We draw attention to press reports (eg 26 March 2018, Bangkok Post) about intention to remove from List 3 many items as some are related to manufacturing, or are 'S' curve industries, or will support the EEC. These are essentially the ten 'S' curve industries which should be removed from List 3. We do not recommend a geographical restriction.

It is possible that some activities are not only in the services sector. However by maintaining a negative list approach, these would be permitted.

We also draw attention to a press report (18 June 2018, Bangkok Post) wherein five services were stated to be planned to removed from List 3. As reported, they are accounting, legal services given to subsidiaries, space and facility rental, lending to subsidiaries and consulting services.

THIRD GROUP

In addition are service sectors most of which are strategic in that their good functioning will have a multiplier effect on the economy. We note these as being important and

should not be restricted by inclusion in List 3.

- i) Logistics are vital to Thailand capitalizing on its central location in ASEAN. We recommend that all logistics, courier and goods transport be removed from List 3.
- ii) All business support services of any kind (many of which are BOI promoted), including standard and advanced BPO, call centres, fulfillment centres and TISO whether in support of regional HQ and ITC or otherwise be removed from List 3.
- iii) Software development
- iv) Research and Development
- v) Telecoms – we recommend that telecoms services be removed from List 3. Practically this applies only to category 1 licences. EABC has a structured recommendation on this topic.
- vi) In-house and intra-group services, including legal, accounting, finance, leasing, sub leasing and other services not offered outside the company or group.

Description

EABC offers to provide any additional information or discuss further.

EABC
29 June 2018