

Tilleke & Gibbins

Foreign Business License/Certificate

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Foreign Business Act (“FBA”)

- ▶ Definition of “foreigner”
- ▶ Businesses subject to restrictions
- ▶ Criteria for FBL application
- ▶ Violation of FBA

Definition of “Foreigner”

- ▶ A non-Thai natural person.
- ▶ A juristic person not registered in Thailand.
- ▶ A juristic person registered in Thailand with at least 50% shares held or invested by non-Thai natural person or juristic person not registered in Thailand.
- ▶ A limited partnership or registered ordinary partnership, the managing partner or manager of which is a non-Thai natural person.
- ▶ A juristic person registered in Thailand with at least 50% of its shares held by above persons (e.g. consider each level of shareholders)

Businesses Subject to Restriction

Schedule 1: strictly prohibited to foreigners – nine types of activities.

Schedule 2: prohibited to foreigners unless they receive permission from the Cabinet e.g. relating to national security or have impact on art, custom, folk handicrafts, or natural resources and environment.

Schedule 3: prohibited to foreigners unless permission is granted by the Director-General of DBD.

Foreign Business License (FBL)

- ▶ Foreign business license (FBL) for business under Schedule 2 or 3 shall be obtained before engaging in such restricted businesses.
- ▶ Government fee:
 - Non-refundable application fee of Baht 2,000
 - Once FBL is approved, 0.5% of the company's capital with the maximum of Baht 250,000

Criteria for FBL Application

- ▶ Section 5 of FBA- The followings shall be considered in granting the FBL:
 - Advantage and Disadvantage effects on national safety and security
 - Economic and social development
 - Public order or good morals
 - National values in arts, cultures, traditions and customs
 - Natural resources conservation
 - Energy and environmental preservation
 - Consumer protection
 - Size of business and employment
 - **Technology transfer**
 - Research and development

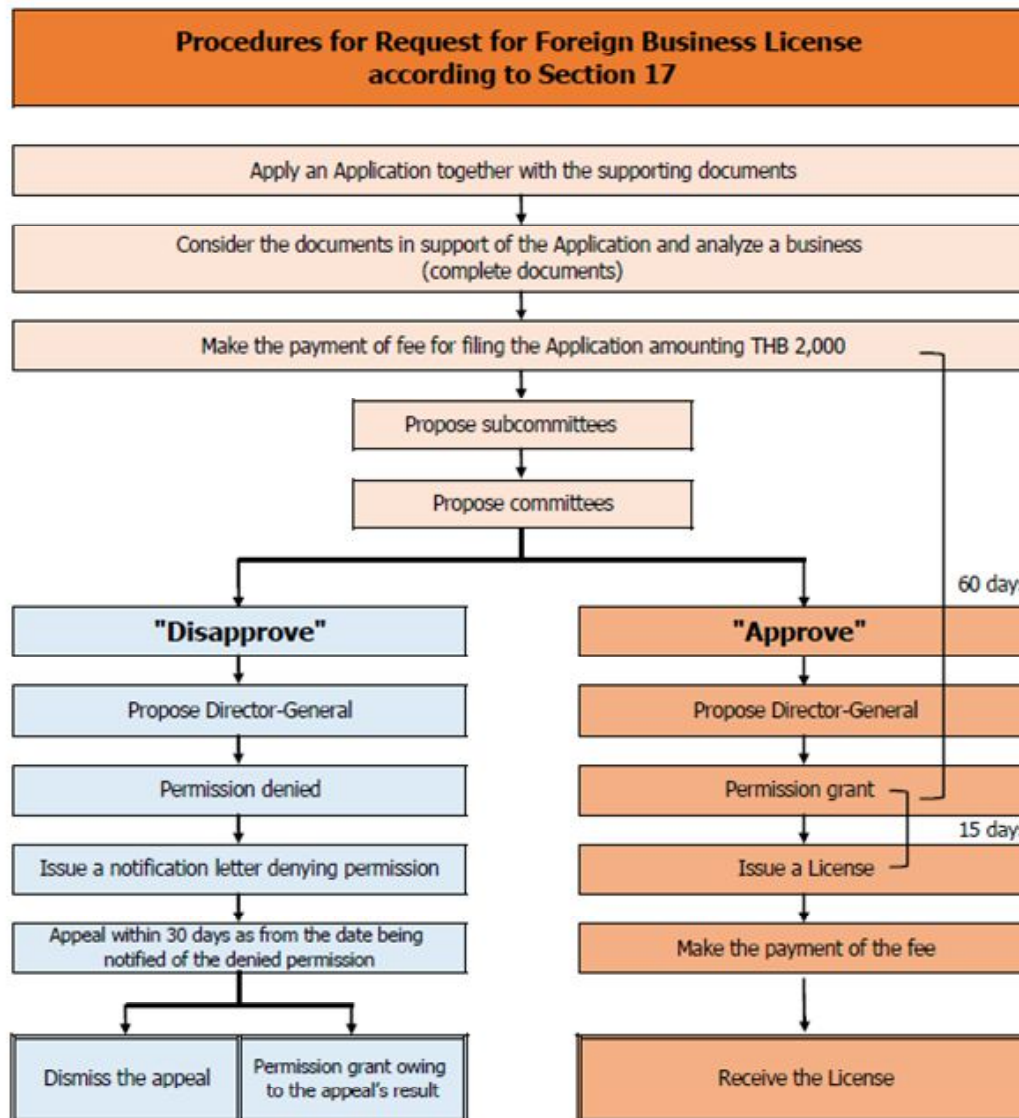
Technology Transfer Criteria

- ▶ To-be-transferred technology must be relevant to business
- ▶ To-be-transferred technology must be authorized or given the right of technology by the owner
- ▶ To-be-transferred technology must not have adverse impact on the national security, consumers' safety, or the environment

Methods of Technology Transfer

- ▶ Contractual agreement
- ▶ Thai personnel/participation in a research and development project
- ▶ Thai personnel/participation in a project of new product/service development for market launch
- ▶ Job appointment of Thai personnel in replacement of foreign staff
- ▶ Technical/knowledge support from experts from overseas and/or getting trainings at the country of origin
- ▶ Educational and/or academic support provided to the involved education institute or any other relevant institution
- ▶ Trainings
- ▶ Other activities

Flow Chart FBL



Exceptions to FBL

- ▶ Board of Investment (BOI) (Section 12 of FBA)
- ▶ Industrial Estate Authority of Thailand (IEAT) (Section 12 of FBA)
- ▶ Treaty Exemptions (Section 11 of FBA)

NOTE: Requires Foreign Business Certificate (FBC) for restricted businesses

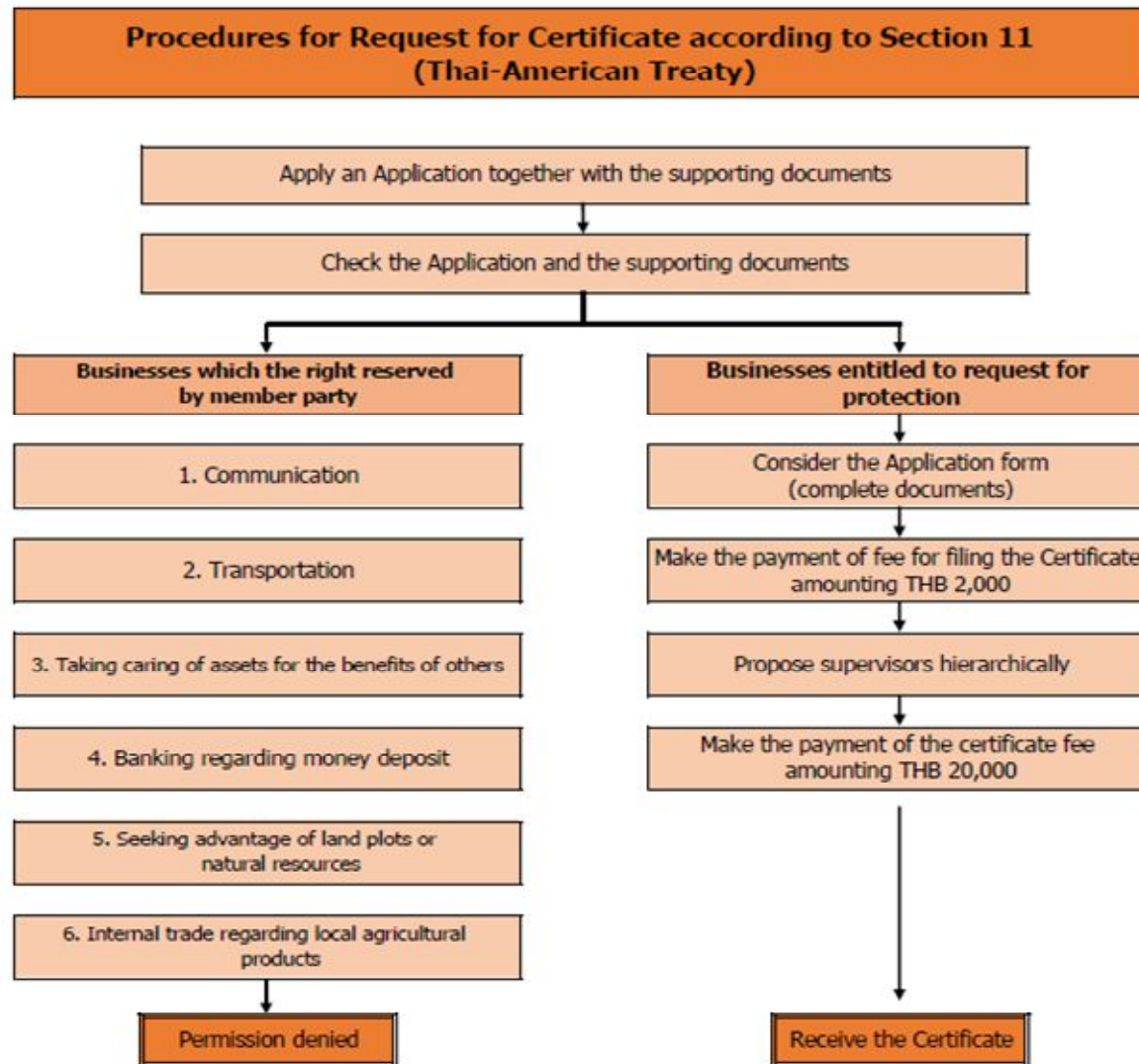
Treaty Exemptions

- ▶ United States-Thailand Treaty of Amity and Economic Relations (US Treaty)
- ▶ Thailand-Australia Free Trade Agreement (TAFTA)
- ▶ Japan-Thailand Economic Partnership Agreement (JTEPA)
- ▶ ASEAN Comprehensive Investment Agreement (ACIA)
- ▶ ASEAN Framework Agreement on Services (AFAS)

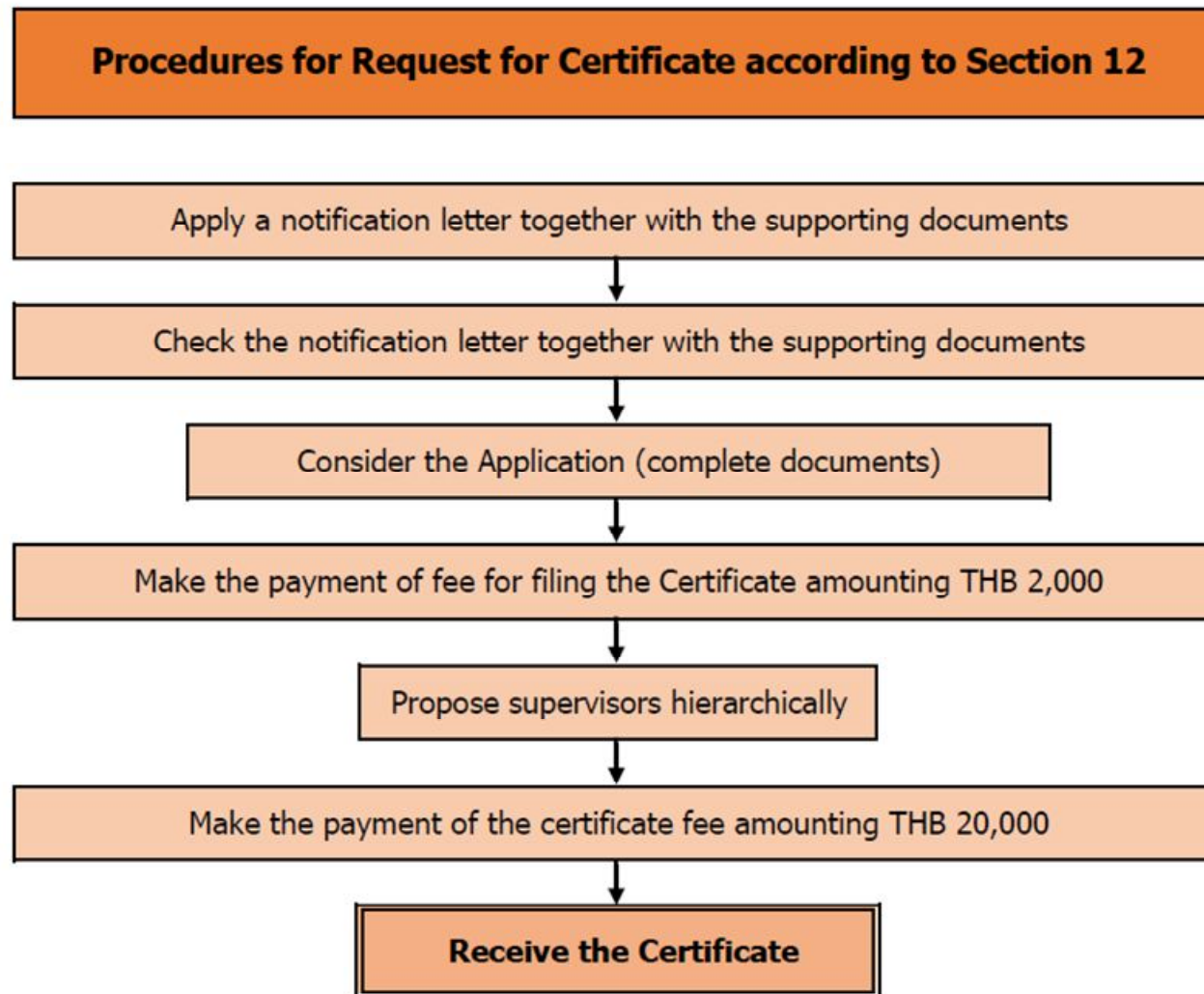
Foreign Business Certificate (FBC)

- ▶ All Treaty Exemptions shall apply for FBC (for restricted businesses) with DBD under Section 11 of FBA.
- ▶ A BOI promoted activity or an industry or trade for export under IEAT shall apply for FBC (for restricted businesses) under Section 12 of the FBA.
- ▶ 30 days after the submission date.
- ▶ Government Fee:
 - Non-refundable application fee: Baht 2,000
 - FBC fee: Baht 20,000

Flow Chart FBC (Section 11)



Flow Chart FBC (Section 12)



Statistic of Applications

- ▶ From March 2000-November 2018
 - Total FBL+ FBC granted: 11,312
 - Dissolved: 2,508
 - Revoked: 3 (all are representative offices)
 - Active: 8,801

	List 1	List 2	List 3	Dissolved/ Revoked	Active
FBL	-	-	5,335	1,832	3,503
FBC-BOI	-	52	4,165	448	3,769
FBC-Treaty	1	13	1,746	231	1,529

Source: www.dbd.go.th

Statistic of FBL granted

Type of Activity	Number of FBL granted	Percentage
Services - To affiliated companies (e.g. provision of loan, legal/accounting, lease of property/machinery, management, financial, marketing, etc.) - To non-affiliated companies (e.g. repair/maintenance, financial, installation of machinery, lease of property/machinery, petroleum exploration, etc.)	(Total 2,703 FBLs) 1,175 1,528	51%
Representative Office/Regional Office	1,480	28%
Construction/engineering service/consultant to government agencies	602	11%
Other (e.g. Broker/Retail/Wholesale)	550	10%

Source: www.dbd.go.th (information as of November 30, 2018)

Violation of FBA

- Breach of qualifications/Breach of conditions under FBL:
 - Revoking FBL (S. 19)
- Nominee arrangement/Operate business without FBL
 - Up to 3 years imprisonment Or Baht 1 million
 - Court order for cessation or dissolution of business or termination of shareholders/partners status.
 - The company's directors or authorized person (who collaborates in such offence) shall also be subject to the above penalties.
- Not notifying cessation or move of business within 15 days/not submit the documents requested by the official:
 - Not exceeding Baht 5,000
- Not remit the minimum required capital:
 - Not exceeding Baht 100,000 to Baht 1 million

Statistic of FBA Violation

Violation	Number of Violators	Percent (%)
Revoking FBL (i.e. breach of FBL conditions)	3	1%
Thai nominee arrangement	6	1%
Operate restricted business without FBL	81	11%
Not notifying cessation or move of business within 15 days	85	11%
Not submit the documents requested by the official	442	58%
Not remit the minimum required capital	140	18%

Source: www.dbd.go.th (information as of November 30, 2018)

Liberalization of service activities

- ▶ **2013.** Services related to securities business and other businesses under the law on securities and securities exchange, derivatives business, and serving as a trustee under the law of trust for transactions in capital markets.
- ▶ **2016.** Commercial bank business, and life and non-life insurance businesses.
- ▶ **2017.** Financial institutions-related services, asset management services, provision of services as a foreign entity's representative office or regional office, and service businesses that have a government authority or a state enterprise as a party to the contract.

To be liberalize (in 2018 news)

- ▶ (1) accounting services;
- ▶ (2) legal services;
- ▶ (3) money lending services;
- ▶ (4) space leasing and facility services; and
- ▶ (5) consultancy services. According to government sources

*Must be provided to an affiliated company or companies in the group.

Thank you.

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