



Legal News

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BOI Announcement No. 7/2561: Extension to the Policies on Promoted Projects in the Special Economic Development Zones

On 3 August 2018, the Thailand Board of Investment (“BOI”) issued the Announcement of the BOI No. 7/2561 regarding Extension to the Policies on Promoted Projects in the Special Economic Development Zones (“Announcement No. 7/2561”) which came into force on the date of issuance. The Announcement No. 7/2561 primarily aims to continually encourage investments in the special economic development zones, particularly in the border areas which are connected to neighboring countries. The details of the Announcement No. 7/2561 are summarized as follows: -

- The BOI has extended the due date to 30 December 2020 to apply for investment promotions in the special economic development zones, which are located in the area of Kanchanaburi, Chiangrai, Trad, Tak, Nakornpanom, Naratiwas, Mukdaharn, Songkla, Sakaew and Nongkai provinces.
- The policies on promoted projects in the special economic development zones shall be in accordance with the Announcement of the BOI No. 4/2557: Policies on Promoted Projects in the Special Economic Development Zones (“Announcement No. 4/ 2557”).
- The details of the Announcement No. 4/ 2557 are summarized as follows:-

- The general and targeted projects, as designated by the Policy Committee on Special Economic Development Zone and located in the special economic development zones, shall be entitled to the following rights and benefits:-
 - Exemption from corporate income tax for a period of 8 years, but not exceeding 100 percent of investment (excluding costs of land and working capital), or additionally exempt from corporate income tax for a period of 3 years, but not exceeding 8 years in total, as the case may be.
 - A 50 percent reduction of the normal rate of corporate income tax on the new profit derived from the promoted project for a period of 5 years from the expiry date of the corporate income tax exemption.
 - Permitted to double the deduction of costs for transportation, electricity and water supply for a period of 10 years from the date in which the revenue from the promoted project is generated.
 - Permitted to deduct 25 percent of investment costs on the installation or construction of the facilities used from the date in which the revenue from the promoted project is generated.
 - Exempt from import duty on machinery to be used in the promoted project.
 - Exempt from import duty for raw materials and essentials used in the production of products for export for a period of 5 years.
 - Employ foreign unskilled workers for the promoted project.
 - Other non-tax incentives are available.
- The targeted projects located in the area of Kanchanaburi, Chiangrai, Trad, Tak, Nakornpanom, Naratiwas, Mukdaharn, Songkla, Sakaew and Nongkai provinces shall be as designated in the announcement of the BOI for each area. For example, the Announcement of BOI No. 15/2558 has stated that the business of building development for industrial factory or warehouse is considered as the targeted project in the special economic development zone in Naratiwas, etc.

Draft of Private Asset Management Trust Act

Currently there are limitations on instruments available in Thailand to assist in managing private assets. Additionally, the existing law governing the creation of a trust is not applicable to the establishment of a trust for the purpose of managing private assets. These limitations have resulted in a high volume of private assets being remitted abroad. The Ministry of Finance has therefore proposed a draft of the Private Asset Management Trust Act ("the Draft Act") to reduce the outward remittance of private assets for management abroad. The Draft Act was approved by the Thai Cabinet on 10 July 2018. The details of the Draft Act are summarized below.

- Stipulates the definition and criteria for setting up a trust as follows: -
 - Trust is a legal relationship created from the trust agreement where a person called "the settlor" transfers or creates real right or any right attached to the property to another person called "the trustee" in order that the trustee shall manage such property for the benefit of the other party called "the beneficiary".
 - The trust agreement shall be effective once executed in writing, and the settlor must not be the same person as the trustee.
- Stipulates the scope of the trust as follows: -
 - The creation of the trust shall be for the purpose of management of private assets. The trust shall not be used for fund raising through a public offering.
 - In case the trust will engage in investment activities, possess land, or operate a business which are regulated by laws in relation to investment, possession of land, or the engagement of business activities by the foreigners, the trust agreement must stipulate the ratio of the beneficiaries or allocation of benefits for foreigners in the manner which does not violate such laws.

- Stipulates the right, duty, and liability of trustee, including the following: -
 - The trustee shall have a duty to manage a trust with integrity and prudence as a professional with the expertise and shall provide a fair treatment among the beneficiaries.
 - The trustee shall manage the trust for the sole benefit of the beneficiaries and is prohibited from acting in a conflict of interest with the trust.
- Stipulates the right and protection of the beneficiaries, including the following: -
 - The beneficiaries have the right to demand a trustee to manage a trust in accordance with the trust agreement or the Draft Act.
 - The beneficiaries are entitled to claim for damages, trace and recover the property from the third party who acquired such property from the trustee as a result of the trustee failing to perform in accordance with the trust agreement, or the Draft Act.
- Stipulates the criteria for supervision of trustee, including the following:-
 - A person who wishes to undertake activities as a trustee is required to obtain license from the Securities and Exchange Commission ("SEC").
 - The person eligible to apply for the license with the SEC shall be commercial bank under the law governing to financial institution business, financial institution established under specific law, and securities companies under the law relating to securities and capital market.

Notification of Residence of Foreigners

Do you know that a house owner or house possessor must notify the local Immigration authorities if any foreigners reside in the house?

Section 38 of the Immigration Act B.E. 2522 specifies that the "Head of Household, House owners, or possessor of the residence or hotels managers that allow any foreigner to stay must notify the local immigration authorities within 24 hours from the time of arrival of the foreigner." If there is no immigration office in the province where such house or hotel is located, then the notification must be provided to the local police station.

Section 38 paragraph 2, in case that house, residence or hotel locates in Bangkok, the notification must be made to the Immigration Bureau.

Section 38 paragraph 3, the notification as paragraph 1 and 2 will be described by the rules of the Director-General.

In any cases, if there is a foreigner stay in your house, hotel, mansion, apartment or any rented house, you as the owner of the premise must notify to the local immigration authorities of such stay by using TM.30 Form together with the list of foreigner.

The notification of residence of foreigner according to section 38 can be made in the following methods: -

- In person at the respective office, or through an authorized person at the respective office;
- By registered mail; or
- Via internet.

Any person who fails to comply with section 38 shall be subject to punishment with the fine of not exceeding 2,000 Baht but in the case of hotel manager, the fine will be 2,000 Baht to 10,000 Baht.

In practice, the head of household or person typically does not notify the authorities of the foreigner residence since they don't know the law or there

is no strictly enforcement. The businesses operator, owner of rent house, hotel or guesthouses, mansion and apartment where many foreigners usually reside shall proceed with the notification because of the large amount of the fine that applies.

In addition, currently the Immigration Bureau and Immigration office in many provinces have inspections by requesting the receipt of the notification of foreigner residence by the house owner or the possessor of residence as a supporting document for the application for extension of visa of the foreigner. Generally, if there is no receipt of the notification submitted with the application for visa extension the officer will not accept the application for extension of the visa. Therefore, a foreigner has to request this receipt from the head of rent house, apartment or condo.

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