



Engineering, procurement, construction: a guide for foreign companies in Thailand

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The pace of infrastructure development in Thailand has continued to grow in the past few years, bringing numerous opportunities for foreign-based engineering, procurement and construction (EPC) firms looking for ways to participate in projects in the country. However, potential investors need a solid understanding of the legal and regulatory framework before investing significant time, energy and capital.

The most significant law relating to the participation of foreigners in business activities in Thailand is the Foreign Business Act BE 2542 (1999). List 3 of the FBA places restrictions on a number of activities in which engineering and construction firms will likely engage, such as architectural, engineering and construction services, as well as wholesale or retail trading with registered capital under 100 million baht and other ancillary services. A company that has half or more of its shares held by non-Thais will be deemed as "foreign" under the FBA and thus subject to its restrictions.

Foreign companies and foreign majority-owned Thai companies wishing to engage in these activities in Thailand must first obtain a foreign business licence or foreign business certificate from the Department of Business Development at the Commerce Ministry. Importantly, each business line will be treated separately for the purposes of assessing compliance under the FBA. A company with a foreign business licence to conduct architectural services, for example, is not automatically permitted to conduct engineering or construction activities.

Foreign companies must also be aware of professional licensing requirements. Engineering and architectural services are both licensed activities in Thailand, meaning companies in these fields must comply with the regulations of the Council of Engineers and the Architect Council of Thailand.

To become registered and licensed by either council, a company must have Thai-licensed engineers or architects on its board of directors. Foreigners are prohibited from working as engineers or architects in Thailand, so a company wishing to undertake such activities will need to engage Thai engineers and/or architects. Engaging in such services without obtaining the proper licence will result in a fine and imprisonment.

Another issue is that a foreign-incorporated company may not send non-Thai citizens to work in Thailand without first obtaining a foreign business licence. Even after a licence has been granted, a common misconception, especially among foreign professionals whose citizenship permits them visa-free travel to Thailand, is that they are permitted to perform business-related activities on a short-term basis, provided they indicate that their purpose of travel is "business" when arriving at their port of entry.

In reality, foreign nationals are required to obtain work permits after arriving in Thailand and before engaging in any work. Penalties for not obtaining work permits include severe fines, imprisonment and/or summary deportation and blacklisting. This is an important point to consider for offshore contractors intending to deploy employees to perform site visits in Thailand.

A common feature of multinational engineering firms that conduct EPC activities in Thai projects is the "split" contract. Typically, the EPC activities will be divided into two or more contracts, with a wrap-around agreement signed by all parties to ensure joint liability of contractors. Often, engineering and procurement activities will be performed by an offshore contractor, while the onshore contractor will be responsible for construction and commissioning.

When using this structure, the onshore contractor must have obtained a foreign business licence or certificate to perform construction work. Moreover, if the onshore contractor has not obtained an engineering licence in its own name, it will need to retain a licensed Thai subcontractor to approve engineering schematics.

A foreign engineering contractor may consider establishing a Thai subsidiary and applying for investment promotion from the Board of Investment to establish a Trade and Investment Support Office (Tiso), which will allow it to engage in support services, including onshore activities, with certain exceptions, such as civil engineering and architectural services. In case a Tiso-promoted company is established with foreign majority ownership, a foreign business certificate will be required.

The Commerce Ministry on May 26 this year adopted a ministerial regulation with respect to the FBA, outlining a number of service businesses that no longer require foreign business licences under List 3(21), including some services provided by parties that contract with government agencies or state-owned entities. However, these exceptions do not apply to engineering or architectural services or construction.

In conclusion, foreign EPC contractors are able to participate in projects in Thailand, provided they abide by certain licensing requirements and have a clear understanding of the regulatory framework. Much like engineering schematics, it is important to ensure that contractual structures are properly devised at the outset of any project.

While the regulatory framework for foreign EPC contractors is complex, it will be interesting to observe whether the government takes any action to streamline the approval processes to achieve its national infrastructure development objectives.

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