

1 September 2023

THAILAND

Newsletter

Key Contacts



David Beckstead

☎ +66-2-009-5106

✉ david.b@mhm-global.com



Panupan Udomsuvannakul

☎ +66-2-009-5152

✉ panupan.u@mhm-global.com



Theerapat Sombatsatapornkul

☎ +66-2-009-5143

✉ theerapat.s@mhm-global.com



Thanachart Osathanondh

☎ 66-2-009-5151

✉ thanachart.o@mhm-global.com

Thailand: Data Center Regulatory and Legal Landscape

In the past few years, the demand for digital infrastructure, including data storage and managed hosting services, has significantly increased. Therefore, investment into the data center space in Thailand has attracted attention from both domestic and international operators and investors. As a result, the number of data centers in development or operation in Thailand has expanded rapidly in response to the increasing demand. Nevertheless, live capacity (MW) per capita in Thailand is still significantly lower than Singapore and Malaysia, and there is still a lot of room for further expansion and investment.

In this newsletter, we will discuss key legal issues relating to operating data centers in Thailand.

Development Considerations

Data centers present a number of particular challenges that need to be properly understood during the development stage. First, while many data center operators are committed to using zero-carbon energy for their power and cooling needs, given the structure of the Thai power market, this may not be technically feasible. Thailand's on-grid power is still dominated by fossil fuels, with approximately 70% of electricity being generated by natural gas and coal. While the Energy Regulatory Commission ("**ERC**") has issued a regulation mandating the development of third-party access codes for the state-owned power utilities, these remain pending as of the date of this newsletter. As such, at the moment it is not possible to purchase zero-carbon energy through the grid. Developers may consider procuring private behind-the-meter renewable plus storage options, though given the high capital costs in purchasing excess equipment and land needed to ensure a continuous supply of zero-carbon power, unsurprisingly, this is not an option we have seen in practice.

Second, foreign developers need to be mindful of Thailand's restrictions on foreign ownership of land. In general, foreigners are only permitted to own land on a freehold basis if the land is located in an industrial estate administered by the Industrial Estate Authority of Thailand, or if investment promotion has been granted by the Board of Investment ("**BOI**"). Since BOI promotion is available to data center operators (please see below for further details), ownership of land may be granted as a non-tax incentive; however, the timing of land acquisition needs to be properly considered, since land would need to be purchased only after BOI promotion has been granted.

Operating Licenses

There are several business models of data center businesses in Thailand. Data centers are generally considered designated businesses under the Telecommunication Business Act B.E. 2544 (2001), as amended, under which operators must obtain an operating license from the Office of the National Broadcasting and Telecommunications Commission ("**NBTC**") prior to commencing operations.

Based on existing licenses we have seen, in certain cases the NBTC defines a data center business as "the provision of basic infrastructure for information technology to support cloud solutions services, as well as a lease for installation of the customer's computer system, including arrangements related to location, electricity systems, air conditioning systems, fire prevention systems, security systems, and other facilities for client usage".

The NBTC licenses for data centers are generally categorized as a type-1 operating license. This means there are no foreign shareholding restrictions, and the process for obtaining the license takes less time compared to other types of telecommunication licenses. The process to obtain the license can be initiated via the NBTC's online services, and the entire process takes approximately one to two weeks upon the submission of a complete set of supporting documents. Approval of the licenses is generally straightforward as long as the supporting documents are complete and in order.

Foreign Business Licenses

Although the NBTC license does not impose foreign shareholding restrictions, foreigner investors in Thailand are generally subject to the Foreign Business Operation Act B.E. 2542 (1999) ("**FBOA**").

Under the FBOA, foreigners are restricted from operating certain designated businesses and are required to obtain either a foreign business licenses ("**FBL**") or a foreign business certificate ("**FBC**"). Data center businesses generally fall under the definition of a "service business", thus requiring an FBL or FBC. The process for obtaining an FBL can be lengthy, taking between four to six months, and approvals are granted on a case-by-case basis by the foreign business committee at the Ministry of Commerce.

While the committee leans toward approving businesses that have already obtained an operating license from another government agency (such as the NBTC for data centers), the approval is not guaranteed.

BOI Promotion

In Thailand, government-supported business promotion can take several forms, with one of the most common coming from the BOI.

Under the Investment Promotion Act B.E. 2520 (1977), designated businesses can apply for tax and non-tax benefits; operating data centers is included as a BOI promoted business activity.

To be promoted and enjoy the benefits from the BOI, the business operator must meet various conditions imposed by the BOI, which include the following:

- providing complementary services to customers, such as server co-location, managed service, customer's server backup services;
- having an area of at least 3,000 sq.ms.;
- having a main hi-speed telecommunication system linking the data center with domestic and international telecommunication centers. Such system must contain at least four circuits, with at least three circuits being domestic circuits with speed of at least 10 Gbps, and overall speed of all circuits must not be less than 60 Gbps; and
- have ISO/IEC 27001 (data center) certification before invoking the corporate income tax exemption and before the deadline for commencement of full operations.

Upon meeting these requirements and receiving BOI approval, a business operator can enjoy certain tax and non-tax benefits, such as:

- an eight-year corporate income tax holiday;
- an exemption on duties and taxes for imported machinery;
- for foreign investors, the right to obtain an FBC and thus bypassing the abovementioned FBL procedures;
- the right to own land for the promoted business; and
- a special allotment of work permits to employ foreign professionals with more relaxed requirements.

Summary

In short, navigating the data center industry in Thailand involves understanding the necessary licenses, regulatory requirements, available government support, and applicability of the aforementioned legal framework to the contemplated business models. By obtaining the appropriate operating and foreign business licenses and exploring the benefits of BOI promotion, businesses can effectively ensure their compliance status, enjoy tax and non-tax incentives, and grow their data center operations in the country.

Our firm has in-depth experience in this space, including the first REIT investing in a data center in Thailand. If you would like to discuss the legal ramifications for your business, please feel free to contact the authors listed in the left-hand column.

Contact Us

Chandler MHM Limited
17th and 36th Floors
Sathorn Square Office Tower
98 North Sathorn Road
Silom, Bangrak, Bangkok 10500
Thailand
www.chandlermhm.com

This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited. If you should have any inquiries about the publications, or would like more information about Chandler MHM Limited, please contact bd@mhm-global.com.