Global Financial Services Regulatory Guide - Thailand

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# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

In general, Thailand has three main regulators responsible for the supervision of banking and financial services businesses, as follows:

**The Bank of Thailand** (**BOT**), as Thailand's central bank, is responsible for the macro-supervision of the banking and financial services industries in general. These include all commercial banks, finance companies and credit foncier companies, as well as certain financial activities such as exchange controls, consumer finance, and electronic payment systems and services.

**The Securities and Exchange Commission** (**SEC**) regulates all activities related to securities and derivatives, as well as activities of listed companies in Thailand and activities related to digital assets. Listed companies in Thailand are also subject to rules issued by the Stock Exchange of Thailand (SET).

**The Office of Insurance Commission** (**OIC**) supervises all insurance companies, both life and non-life.

In addition to the main regulators discussed above, the **Anti-Money Laundering Office (AMLO)** also regulates the operations of Thai financial institutions to be in accordance with anti-money laundering requirements, such as know-your-customer (KYC), customer due diligence (CDD) and reporting requirements.

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

The main sources of regulatory laws in Thailand are as follows:

**The Financial Institution Business Act B.E. 2551 (2008)**, as amended, and subordinated regulations are the key legislation for the banking and financial institution businesses that govern commercial banks, finance companies and credit foncier companies in Thailand. The BOT is the main regulator in charge of this legislation.

**As amended, the Exchange Control Act B.E. 2485 (1942)** and subordinated regulations govern foreign exchange business and fund transfer. The BOT is also the primary regulator of this legislation.

**The Payment Systems Act, B.E. 2560 (2017)** and its subordinate regulations outline the licensing and regulatory requirements for payment systems and payment services in Thailand. The key regulator of this legislation is the BOT.

**The Declaration of the Revolutionary Council Decree No. 58** and its subordinate regulations prescribes a list of regulated financing offered to individuals without collateral, also known as "consumer finance", which requires the business operator to obtain relevant licenses from the relevant regulators depending on the type of consumer finance. Most types of regulated consumer finance are under the supervision of the BOT.

**The Securities and Exchange Act B.E. 2535 (1992)**, as amended, and subordinated regulations are the main framework law in Thailand that governs all securities-related activities, including securities offering and securities business operation, such as securities brokerage, dealing and underwriting activities. The SEC is the main regulator of this legislation.

**The Derivatives Act B.E. 2546 (2003)**, as amended, and subordinated regulations govern derivatives business operations in Thailand, such as derivatives brokerage and dealing activities, for both exchange-traded and over-the-counter derivatives. The SEC is also the key regulator of this legislation.

**The Emergency Decree on Digital Asset Businesses B.E. 2561 (2018)** ("**Digital Asset Decree**"), which came into effect on 14 May 2018, and subordinated regulations are the fundamental laws regulating businesses relating to digital assets (i.e., cryptocurrencies and digital tokens). The main regulator of this legislation is also the SEC.

**The Life Insurance Act B.E. 2535 (1992)**, as amended, and subordinated regulations govern life insurance businesses, whereas **the Non-Life Insurance Act B.E. 2535 (1992)**, as amended, and subordinated regulations govern non-life insurance businesses. The OIC is the key regulator for insurance businesses.

In addition, the Foreign Business Act B.E. 2542 (1999), as amended ("**FBA**"), is the main general legislation regulating foreign participation in the operation of restricted businesses (e.g., service-based business) in Thailand. **The Ministry of Commerce (MOC)** is the key regulator of this legislation.

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

Thailand regulates a broad range of activities, which include but are not limited to the following:

**Conducting a financial institution business** – This would cover typical banking activities involving the operation of deposit and current accounts. Any financial business that accepts deposits from the public is regulated.

**Conducting foreign exchange business** – The regulated businesses mainly include foreign currency exchange, cross-border fund remittance, and treasury center, for which a specific license is required.

**Carrying out regulated payment service** – The regulated payment service refers to the provision of any payment instrument or payment channel service for the purpose of paying for goods or services and transferring money. This covers a broad range of activities involving matters such as service of receiving payment for and on behalf of others, electronic fund transfer service, payment facilitator service, card issuance, and acquiring service.

**Providing electronic money** **service** – "Electronic money" means electronic cards, object or information that is stored in a device issued by a service provider for service users, with the prepayment of funds to the service provider, for the funds to be used to make payments for goods, services or any other things in lieu of cash.

**Providing consumer finance service** – Financing offered to individuals is a regulated business that requires a proper license. The key regulated business includes pico-finance, nano finance, personal loans and credit cards.

**Providing investment advice** – Providing advice on investments in securities or derivatives is a regulated activity in Thailand. For example, provision of advice on the merits of acquiring or disposing of particular securities requires a proper license.

**Trading securities or derivatives as a principal or an agent** – This would cover securities and derivatives brokers as well as dealers, which requires a proper license.

**Underwriting securities** – This covers the act of underwriting securities for subscription on behalf of the issuer.

**Securities borrowing and lending** – Arranging for securities borrowing and lending, whether acting as a principal or an agent of a borrower or a lender, is a regulated activity that requires a proper license.

**Engaging in fund management** – This mainly covers mutual fund and private fund management. The former is the operation of a collective investment scheme, while the latter is the discretionary management of investments through a segregated account on behalf of another person.

**Conducting a digital asset business** – Thai digital assets law regulates the offering of digital tokens to the public and the operation of digital asset businesses that enable the trading and exchange of digital assets. The digital asset businesses include digital assets exchange, brokerage, dealing, fund management, advisory and custodian.

**Carrying out insurance business** – Thai regulation covers various insurance activities, such as acting as an insurer or reinsurer and as insurance agencies or brokers.

In addition to the above, the FBA requires any foreigner or foreign entity who carries out any restricted business in Thailand to obtain a foreign business license before actually operating the business. By "any restricted business," the FBA covers a broad range of business activities (e.g., service-based business) — whether or not regulated under other specific regulations — with certain exemptions.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

Thai regulations operate on a territorial basis. This means to be subject to Thai licensing requirements, business or activities must have at least some element taking place in Thailand. Based on this, whether and to what extent a given activity will be regulated under Thai law can be considered in light of the following conceptual scenarios:

**Purely offshore** – If not a single element of the business activity takes place in Thailand, such as cases where the service provider is located outside Thailand with no presence or communication entering into or originating in Thailand, such a business activity will generally not be subject to the licensing requirements under Thai law.

**Cross-border communication** – Where there is no physical presence of the service provider in Thailand, but communication (e.g., emails and phone calls) is made to or from clients or prospects in Thailand, separate consideration needs to be given to two different regulatory schemes, i.e., the FBA requirements and other business-specific licensing requirements (including securities offering regulations). From the FBA aspect, provided that there is no physical activity being conducted in Thailand, it is very unlikely that the service provider will be considered conducting restricted business in Thailand that would require a license under the FBA. From a business-specific licensing requirements aspect, where offshore business operators make no solicitation to Thailand-based clients or prospects for them to use their services or buy their products or only offer their services/products to Thailand-based clients in reliance on official exemptions, the offshore business operators will not be subject to any business-specific licensing requirements under Thai law.

**Onshore basis**– Where a regulated activity is physically conducted in Thailand, the regulatory risks would substantially increase from both the perspective of the FBA and business-specific licensing requirements. Most activities conducted by foreigners or foreign entities are restricted and not permitted without a license under the FBA. Separately, whether any business-specific licensing requirement applies needs to be considered on a case-by-case basis.

There are specific exemptions from certain licensing requirements when the activity is conducted on a cross-border basis. By way of example, we wish to highlight the following regulated businesses for which there are official exemptions  ̶  investment advisory and private fund management services.

**Investment advisory**
Providing what is considered "investment advice" in the normal course of business for a fee is regulated as an investment advisory business. While a specific license is required, none is available to offshore entities. Thus, there are certain exemptions from the licensing requirement. One instance is where investment advice is given exclusively to a Qualified Institutional Investor. Another example is where an offshore investment advisor duly licensed by a securities regulatory agency that is a member of IOSCO gives investment advice to retail investors through a Thai securities company who arranges such provision of investment advice. Both of these cases are exempt from the investment advisory license.

**Private fund management**
Regulated private fund management services under Thai law is also known as discretionary investment management services. Those who manage the investment of Thailand-based investors on a discretionary basis through a segregated account under an investment mandate given by the investors are subject to private fund management licensing requirements. A relevant example of the official exemptions available is where an offshore securities business operator (duly licensed to operate a securities business by a regulatory agency of a country that is a member of IOSCO) offers and/or provides its private fund management services exclusively to a Qualified Institutional Investor.

Apart from the official exemptions discussed above, some offshore business operators adopt the practice of "reverse solicitation" as an unofficial safe harbor to provide their products or services to clients in Thailand. While this practice is neither official nor endorsed by any regulator, it is often used as an argument that the offshore operator has no intention to provide its products or services in Thailand, but rather, it is the client or investor that approaches the offshore business operator to obtain them. Therefore, in their view, the business operation should be considered as operating offshore, and the offshore business operator should not be subject to the regulatory scheme under Thai law. This practice should, however, be adopted with extreme care.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

While there are many types of licenses for providing financial services in Thailand, depending on the nature of the activity in question, most business-specific licenses are only available to Thai entities — with some available to Thai branches of foreign entities. For example, commercial banks seeking a banking license can be either a Thailand-incorporated entity or a Thai branch of a foreign bank, while no securities business licenses are currently available to offshore entities.

Some registration schemes are available to offshore entities for certain activities, such as dealing in derivatives for one's own account. Qualified offshore entities can apply for derivatives dealer registration under Thai law.

As there is no unified platform under any particular regulation on which to apply for different types of financial services business licenses or registrations, the application process needs to be considered on a case-by-case basis, depending on the type of license and registration.

For business activities in Thailand in general, foreigners and foreign entities (determined based on the place of incorporation and/or shareholding structure in the case of companies) are required to obtain a foreign business license under the FBA. Only some types of businesses, such as establishing a representative office or a regional office of a foreign entity, are narrowly excluded from this general licensing requirement.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

In most cases, an applicant for a license (or registration) must complete a formal process involving the completion of required application forms and the submission of supporting documentation to the authority in charge.

While there is no unified application process for all licenses/registration, and the particular forms that must be completed will depend on the nature of the regulated activities being conducted, the Licensing Facilitation Act B.E. 2558 (2015) requires the authorities responsible for any specific license/registration to publish a relevant licensing manual for the public. Each manual must cover the rules, procedures and conditions for submission of the application, as well as the authority's timing commitment. A centralized online database of such manuals is available [here](https://www.info.go.th/).

Currently, market participants who introduce innovative financial services to the Thai securities or derivatives market could also choose to participate in the SECs regulatory sandbox scheme. Qualified participants under such scheme will be exempted from securities or derivatives licensing requirements during the period of the scheme, which should be no longer than a year. However, the participants could apply for an extension of such a period to the SEC.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

Thailand has no equivalent to European style passporting arrangements, with the following being the closest yet much narrower schemes available in Thailand:

**ASEAN Collective Investment Schemes** (**ASEAN CIS**) aim to streamline the regulatory approval and filing processes for offering investment units in certain qualified collective investment schemes (**CIS**) across certain ASEAN nations (at present, Thailand, the Philippines, Malaysia and Singapore).

**The Asia Region Funds Passport** (**ARFP**) aims to facilitate units of funds authorized in a participating country to be offered publicly in other participating countries through locally licensed distributors upon approval as an ARFP fund.

**Foreign exchange-traded fund** **CIS** (**foreign ETF**) allow the units of foreign ETF established under foreign law and meeting the criteria specified by the SEC to be listed on the Thai stock exchange and offered to investors in Thailand.

**Mutual Recognition of Funds between Hong Kong and Thailand** (**HK-TH MRF**) aims to facilitate cross-border offerings of funds between Hong Kong and Thailand, setting out mutual conditions and criteria for funds and CIS operators to meet the eligibility requirements under the HK-TH MRF. Funds to be offered publicly in another country (host country) through locally licensed distributors of the host country must be approved by the jurisdiction regulators in which such funds are established (home country) and must meet the mutual requirements under the HK-TH MRF.

# 8. Authors and contact information

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