

Newsletter:

The Rise of Data Centers: Why Thailand is Becoming a Hotspot for Colocation Services

In Brief

In today's digital era, Data Centers are the backbone of our technology-driven world. These physical facilities house and manage vast amounts of computer systems and equipment, serving as the lifeblood of data collection, protection, and maintenance. Among the array of services they offer, Colocation Data Center services are rapidly gaining traction. But what exactly is colocation, and why is it creating a buzz in the business world?

Colocation services provide companies the option to lease space within a provider's data center to store their servers and hardware. Unlike in-house data management, colocation facilities come with fully equipped infrastructure, including power, cooling systems, security, and a dedicated technical team to ensure smooth operations. This service offers a strategic solution for businesses that require robust data management but lack the resources or space to do it themselves.

The Thai Boom in Data Center Demand

Thailand's data center market is experiencing explosive growth. The surge is driven by the increasing reliance on technology in everyday life and the rapid expansion of tech-related businesses. As more companies embrace digital transformation, the need for reliable and secure data storage solutions becomes paramount.

Why is Thailand becoming a hub for Data Centers?

- ◆ **Strategic Location:** Positioned at the heart of Southeast Asia, Thailand is ideally located to act as a digital gateway to the region.
- ◆ **Stable Power Supply:** Consistent and reliable electricity is crucial for data center operations, and Thailand meets this requirement effectively.
- ◆ **Government Incentives:** The Thai government, through the Board of Investment (BOI), is actively offering attractive incentives to lure businesses into this burgeoning sector.

Opportunities for Entrepreneurs

For entrepreneurs looking to tap into Thailand's burgeoning data center industry, several key factors should be at the forefront of their strategy:

- ◆ **Infrastructure:** Ensuring top-notch facilities with high levels of security and efficiency.
- ◆ **Compliance:** Staying updated with Thai regulations and BOI incentives.
- ◆ **Market Trends:** Keeping a pulse on the growing tech landscape and evolving data management needs in the region.

Thailand's burgeoning role as a data center hub presents a golden opportunity for businesses looking to expand their digital footprint in Southeast Asia. With the right approach, entrepreneurs can leverage this momentum to establish themselves as key players in a thriving market.

Key Takeaways

For entrepreneurs to operate a Data Center in Thailand, the following key details are important to consider:

1. Laws and Regulations

1.1. License and Permits

Data Center business fall under Telecommunications Business Operation Act B.E. 2544 ("**Telecommunications Act**") which is under the authority of the authority of the Office of the National Broadcasting and Telecommunications Commission ("NBTC"). According to Section 7 of Telecommunications Act, the telecommunication businesses are categorized into 3 types of licenses:

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About us

ILAWASIA is a full-service, Thai law firm based in central Bangkok. Mr. Somphob Rodboon, an acclaimed expert in business law and litigation in Thailand, founded ILAWASIA since 2007. A visionary Managing Partner, he expanded the firm's operation into Myanmar through acquisition of an experienced and respected local law firm in June 2018. Additionally, the firm established an office in Cambodia in August 2019 and incorporated a branch in Laos in January 2021.

We offer services in business and international law ranging from corporate and commercial law, litigation, intellectual property and due diligence to immigration, real estate and labour law. Our teams are individualistically experienced in legal practice and always combine cutting-edge understanding with a unique sensitivity to international clients' business needs. With pride, we take our ethical standards seriously, ensuring responsibility, care and respect in all aspects of our operations.

Type One license	Type Two license	Type Three license
Does not have his or her own telecommunication network	Does not have his or her own telecommunication network	Have his or her own telecommunication network
Provide services on the basis of liberalization	Provide services for a limited group of people or has no significant impacts on free and fair competition or on public interest and consumers	Provide services to a large number of general public or may have significant impacts on free and fair competition or on public interest or requires special consumer protection

Since the Data Center business does not require its own telecommunications network and operates based on liberalization principles. Therefore, Data Center business is required to obtain a **Type One license** under the Telecommunications Act.

The qualifications for obtaining a type one license shall be as follows;

- ◆ The applicant shall not be a bankrupt;
- ◆ The applicant shall never have a telecommunications business license revoked;
- ◆ The directors, managers, or persons in authority of the applicant shall not be a person sentenced by a final judgment for an offense committed under this Act, or under the law on telegraph and telephone, the law on radiocommunication, or the law of consumer protection during 2 years period prior to the date of submitting the application.

To operate the Data Center business, the owner must pay government fees to obtain and renew the business license, as well as an annual fee. The annual fee is calculated based on the yearly income before deduction expenses. For businesses with a Type One license, the fee ranges from 0.25% to 1.5%, depending on their annual income.

Once the business license is obtained, the business owner is required to commence operations within 1 year from the license issuance date. Additionally, the business must submit a performance report to NBTC every 3 months until services begin.

Upon commencing operations, the business owner must submit an annual report, which includes key details such as start and end dates of operations, financial statements, number of customers, business plan, and other information as specified by NBTC.

Furthermore, any changes to the business, such as the changes of a company name or address, the director, or shareholders that could affect the company's status converting into a foreign-owned entity, must be promptly reported to the NBTC.

1.2 Foreign Shareholder

Although the Type One license does not impose specific regulations related to foreign shareholder, the company which is not Thai company is still subject to **the Foreign Business Act B.E. 2542**.

The company that is not registered in Thailand or the company that is registered in Thailand with foreign shareholders holding 50 percent or more of the shares shall be considered as a foreign company and may fall under Foreign Business Act B.E. 2542 ("**FBA**"). Data Center business is classified as a "services business" under FBA, the company must obtain a Foreign Business License before operating a business.

2. Incentives

2.1 BOI Promotion

Regarding the Investment Promotion Guide 2024, Data Center business was stipulated in Investment Promotion Division 4, section 8, digital industry. Data Center business has been classified under incentive category A1.

The conditions for Data Center business to apply for BOI are that the equipment and systems must ensure that their equipment and systems are fully prepared and operational. These are some key conditions that are important for entrepreneurs to consider:

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- ◆ The project must provide complementary service for customers located in projects such as server co-location, managed service, customer's server backup service, disaster recovery service (DRS), Data Hosting;
- ◆ The project must have a "Continuous Rating" generator, which is capable of supporting the entire electricity needs of the Data Center, with a backup generator that can support the need for electricity when one of the generators does not function properly;
- ◆ The project must be certified with ISO/IEC 27001 (data center).

2.2 Benefits for A1 incentives in BOI

- ◆ Exemption of corporate income tax for 8 years with no cap.
- ◆ Exemption of import duties on machinery.
- ◆ Exemption of import duties on raw materials used in R&D.
- ◆ Non-tax incentives, for example, permit to own land or take out or remitting money abroad in foreign currency.

2.3 Other Promotion

Not only the promotion provided by BOI, but there is another incentive for operating Data Business in Thailand under Royal Decree Re VAT Exempt for Data Center Service No. 759. Business owners who submit their application before November 7, 2570 are eligible for a VAT exemption for Data Center business, which has conditions as follow;

- ◆ It is Thai company or registered under the law of Thailand;
- ◆ The company that had been registered VAT;
- ◆ The company which has been promoted under the Competitiveness Enhancement for Target Industries Act B.E. 2560;
- ◆ The business owner of Data Center who has not claimed the purchase tax related to the Data Center to deduct it from the sales tax in their VAT within 3 years prior to the tax payment month or submission of the application under section 2.

Please note if the operators apply for VAT exemption for the Data Center business, they will not be able to claim the purchase tax of VAT.

Conclusion

As the technology sector continues its rapid expansion, the Data Center business emerges as a compelling opportunity for entrepreneurs. With increasing data demands, businesses are turning to robust solutions like colocation services to manage their digital assets efficiently. Thailand, with its strategic location, reliable infrastructure, and attractive incentives, stands out as a promising destination for data center investments. The government's support, including income tax exemptions and VAT exemptions, further enhances the country's appeal, making it an ideal spot for entrepreneurs to establish or scale their ventures.

For businesses eager to dive into this thriving industry, ILAWASIA offers expert legal counsel to navigate the complex regulatory landscape. We are a one-stop service for legal consultation, providing a comprehensive range of services tailored to the Data Center business. Our expertise includes:

- ◆ Company Setup
- ◆ Corporate Structure Planning
- ◆ Joint Venture Agreements
- ◆ NBTC License Applications
- ◆ BOI and Foreign Business License
- ◆ Lease Agreement Reviews
- ◆ Data Center Colocation Service Contract Reviews
- ◆ Construction Contracts for Data Centers

We ensure your business stays compliant and competitive, helping you seize opportunities without legal hurdles. Partner with us, and let's grow your business in Thailand's dynamic and evolving data center market.

Remark: This newsletter is not intended to provide legal advice. It is for informational purposes only and should not be considered a substitute for professional legal consultation.