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Thailand tightens rules on foreign shareholding



I. Introduction

The Department of Business Development (“DBD”) under the Ministry of Commerce has announced that it will enhance its measures to crack down on “nominee” arrangements, whereby Thai nationals hold shares on behalf of foreigners in order to circumvent the Foreign Business Act.

According to recent DBD statements, the Ministry of Commerce is preparing a draft order containing additional measures focusing in particular on closer scrutiny of Thai shareholders and verification of the source of investment funds. The aim is to close legal loopholes while maintaining a welcoming environment for legitimate foreign investors.

The DBD has indicated that the new order is expected to be issued in mid-March 2026 and to take effect as early as 1 April 2026.

II. Investment restrictions under the Foreign Business Act

According to the Thai Foreign Business Act B.E. 2542 (1999) (“**FBA**”), foreigners are prohibited or restricted from carrying out certain business activities in Thailand.

For the purposes of the FBA, the term ‘foreigner’ means:

- a natural person who is not a Thai citizen;
- a legal person who is not registered in Thailand; or
- a legal entity which is registered in Thailand and which has more than half of its capital shares held by any of the aforementioned persons under (i) or (ii).

The various types of prohibited or restricted business activities are set out in three lists annexed to the FBA.

For example, List 3 includes business activities in which Thai nationals are not yet ready to compete with foreigners, including ‘other service businesses’.

This category often serves as a 'catch-all' category for service businesses, and foreigners wishing to engage in such activities in Thailand must apply for a Foreign Business Licence (FBL) from the Commercial Registration Department of the Ministry of Commerce.

III. Illegal Use of Nominee Shareholders

In practice, applying for an FBL can be a lengthy and cumbersome process, as the Thai authorities will assess the potential benefits and disadvantages to Thailand and its people, technology transfer, research and development, etc.

As a "solution", some foreign investors use a Thai shareholder (who holds the majority of the shares in the company on their behalf). However, such arrangements are prohibited under Thai law and have become a major enforcement focus for the authorities. It is important to note that under the FBA, nominee arrangements may expose both the Thai nominee and the foreign investor to criminal sanctions.

If found guilty, both the Thai nominee and the foreign investor may be subject to administrative fines ranging from THB 100,000 to THB 1,000,000, plus daily fines for continued non-compliance with a court order, and may also face imprisonment for up to three years.

IV. Update: DBD tightens rules on foreign shareholding

The DBD reiterated its policy intention to tighten both incorporation review and administrative enforcement against suspected nominee structures, with a particular focus on high-risk areas and sectors, including tourism and real estate (expressly mentioning Phuket and Pattaya) as key economic areas of concern in practice.

The DBD further stated that this stricter approach is being supported by the use of new IT and data analytics and to move beyond a purely formal review of shareholding ratios, but also at source of funds, financial capacity of Thai shareholders, repeated use of the same individuals, and suspicious registration patterns.

A brief summary of key announcements by the DBD in this area includes:

- On 15 December 2025, the introduction of enhanced supporting document requirements for incorporations; introduced under DBD Order No. 2/2568, effective from 1 January 2026, which the DBD reports have already reduced attempted nominee registrations by more than 65%.
- A nationwide review of 46,918 "risk-group" companies, with intensified, province-level enforcement and specialised taskforces.
- On 16 March 2026, an announcement by the Ministry of Commerce that it is preparing a further draft order to tighten registration rules where foreigners are added as partners or become authorised signatories; the specific content of this order is expected to be issued in mid-March 2026 and to take effect from 1 April 2026.

However, until this new order is formally published, it should still be described as an expected administrative measure rather than a final, enacted rule/ policy.

V. How foreign investors can legally operate in Thailand

In general, foreign investors typically have five (5) lawful options to operate a majority foreign-owned company in Thailand.

1. Genuine Joint Venture

A lawful option for foreign investors is to operate through a genuine joint venture with a Thai partner, provided that the structure reflects a real commercial relationship.

In such structures, the Thai shareholder(s) typically hold 51% (or more) of the share capital to ensure the company is not classified as "foreign" under the FBA. The Thai partner must make a genuine capital contribution, assume commercial risk, and participate in the business. Governance arrangements must align with the shareholding structure and must not grant effective control to the foreign minority.

When properly structured, a genuine joint venture allows foreign participation in restricted sectors while remaining compliant with Thai law.

2. Activities do not fall under the FBA

Some activities are simply not restricted by the FBA and therefore allow 100% foreign ownership without requiring a foreign business licence.

Notable examples include (not exhaustive):

- Export businesses, provided products are sold abroad and not directly in the Thai domestic market.
- Manufacturing companies, since manufacturing is generally not listed as a restricted activity under the FBA.

3. Foreign Business Licence

Foreign investors wishing to conduct a restricted activity may apply for a Foreign Business Licence under the Foreign Business Act.

This licence grants legal authorization for a foreign-owned company to operate in sectors normally restricted.

The process typically requires:

- detailed documentation explaining the proposed activity
- evidence that the project will benefit Thailand economically, such as technology transfer or job creation
- a minimum registered capital of THB 3 million.

Approval is not automatic, and the review process can take several months. Authorities carefully assess whether the activity may negatively affect local Thai businesses and whether the project provides sufficient economic value to the country.

As a result, obtaining a Foreign Business Licence can be complex, uncertain, and administratively demanding, with no guarantee of approval even after submitting a complete application.

4. Investment Promotion through the BOI

A popular route for foreign investors seeking majority foreign ownership is to obtain promotion from the Board of Investment ("**BOI**"). BOI-promoted businesses may, in appropriate cases, benefit from 100% foreign ownership, tax incentives, import duty relief, easier access to visas and work permits, and the ability to obtain a Foreign Business Certificate instead of a separate Foreign Business Licence for the promoted activity.

BOI promotion is, however, not automatic and is generally available only for activities aligned with Thai policy priorities, such as advanced manufacturing, digital infrastructure, technology, research and development, and high-value services.

5. Exemption from the FBA

In addition to the general routes described above, two important exceptions should be noted:

First, U.S. investors may in certain cases rely on the Treaty of Amity and Economic Relations between Thailand and the United States. A qualifying U.S.-owned company may obtain national treatment in Thailand and thereby operate outside many of the restrictions that would otherwise apply to a "foreign" company under the FBA. In practice, this is one of the main legal bases on which a majority or wholly U.S.-owned company can operate in Thailand without requiring a standard Foreign Business Licence for many activities. To qualify, the structure must generally remain genuinely U.S.-controlled, including at least 51% U.S. shareholding and a majority of directors meeting the applicable U.S. qualification criteria. However, the Treaty of Amity is not unlimited. Even treaty-protected businesses remain restricted in certain reserved sectors, including communications, transport, fiduciary functions, banking involving depository functions, exploitation of land or other natural resources, and domestic trade in indigenous agricultural products. In addition, treaty protection does not override Thai land ownership restrictions. The Treaty is therefore highly useful, but only for a defined class of U.S. investors and only for activities that fall outside these carved-out sectors.

Second, the FBA itself contains an important capital-based exception for retail and wholesale businesses. Under List 3 (14), a foreign company may conduct retail business without an FBL if the total minimum capital is at least THB 100 million, provided that each retail outlet has capital of at least THB 20 million. Under List 3 (15), a foreign company may conduct wholesale business without an FBL if the minimum capital for each wholesale outlet is at least THB 100 million.

VI. Outlook

Thailand remains open to foreign investment. While the legal framework governing Thai nominee structures has not changed, the recent announcements by the DBD reiterate policy shift towards more substance-based scrutiny and focus on enforcement strategies (e.g. by using new technology and data analytics).

This does not mean that Thailand is closing its market to foreign capital. Rather, it means that the authorities increasingly expect foreign investment to be implemented through transparent and legally supportable structures.

Given the current enforcement climate, structures that may previously have been treated as “market practice” are now materially riskier, particularly in sectors already identified by the authorities as enforcement priorities (e.g. tourism and service sectors in popular tourist locations).

VII. Our services

Should you have any questions regarding an incorporation process in Thailand, please do not hesitate to contact us by email at thailand@luther-services.com or by telephone at +66 2 210 0036.

We are also happy to assist with corporate compliance matters, including company formation and restructuring, company secretarial services, accounting and payroll coordination, as well as general corporate and tax advisory services.

VIII. Your contacts



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