

Feature FAQ: Proposed Amendments to the Foreign Business Act Passed by Cabinet

In early January 2007 the Thailand Cabinet passed amendments to the Foreign Business Act. The proposed amendments were not approved by the Council of State, and hence have not become law.

Q: Has the Foreign Business Act of 1999 recently been changed?

The Foreign Business Act has not been repealed however significant amendments introduced by the Ministry of Commerce were passed by the Cabinet in early January 2007 (read an English language translation of the amendments). Legislation passed by the Cabinet generally becomes law after approval (and sometimes modification) by the Council of State and publication in the Royal Thai Government Gazette. In this case, the proposed amendments were not approved by the Council of State, and hence have not become law.

Q: What is the Foreign Business Act of 1999?

The Foreign Business Act of 1999 regulates the business activity of foreign nationals and foreign business entities in Thailand. Foreign business entities are defined as juristic persons in which more than half of the shares are held by foreign nationals. These entities are restricted from certain industries reserved for Thai persons and juristic persons.

Q: How would the amendments modify the Foreign Business Act of 1999?

The definition of a registered foreign company in Thailand would be modified to include companies where more than half of the voting rights are held by foreign nationals. (Certain restricted businesses with preferential voting shares for foreigners would be "grandfathered in" while others would be required to modify voting share structure.)

Persons in violation of certain provisions of the Foreign Business Act of 1999 would be required to alert the Director General of the Ministry of Commerce of their offense and correct their violation within one year.

Fines levied for violation of certain provisions of the Foreign Business Act would be increased

List Three of the restricted businesses of the Foreign Business Act would be slightly modified

Q: How would the definition of a foreign company change under the amended Foreign Business Act?

The Foreign Business Act of 1999 defines a foreign company as a company where half or more of the shares are held by non-Thai persons or companies. The amended version of the Foreign Business Act would expand the definition of a foreign company to include companies where more than half of the voting rights are held by non-Thai persons or companies. This measure would effectively close the loophole used by many foreigners to own less than half of the shares of a company while still effectively controlling the company with majority voting rights.

Q: How would existing Thai companies that would be defined as foreign under the amended definition of "foreigner" be effected?

The effect on Thai companies that would become foreign under the amended Foreign Business Act varies according to the restricted list into which the business would fall. The Foreign Business Act of 1999 divides industries restricted to foreigners into three lists. List One businesses are restricted for "special reasons" and include media, fishery, forestry, rice farming and Thai land trading. List Two businesses are restricted to foreigners because they are related to arts and culture, natural resources and folk crafts. List Three businesses, including the liberal professions, are restricted to foreigners because Thai nationals are deemed not yet ready to compete.

List One, List Two, List Three: All Thai companies that would become foreign under the new legislation that wish to continue carrying out a business in a category restricted to foreigners would be required to file for a certificate of authorization from the Director General of the Ministry of Commerce within one year after the act goes into effect.

List Three: Companies conducting a business restricted to foreigners in List Three would be allowed to continue to conduct their business indefinitely provided they have a Certificate of Authorization.

List One and List Two: Companies conducting a business restricted to foreigners in List One or List Two would be allowed to continue conducting their business for two years from the day in which the act goes into effect.

Q: Do the drafted amendments to the Foreign Business Act of 1999 have a provision about nominee shareholders?

The Foreign Business Act of 1999 prohibits Thai nationals from holding shares on behalf of foreigners in order to enable foreigners to conduct business in a restricted category. The amendments would require persons or business entities in violation of this provision to notify the Ministry of Commerce within 90 days. Persons or

business entities in violation of the nominee shareholder provision would have one year to correct the share holding of the company before being subject to punishment under law. The fine for companies utilizing nominee shareholders under the amended Foreign Business Act would be modified from 100,000 to 1,000,000 baht under the Foreign Business Act of 1999 to 500,000 to 5,000,000 baht under the amended Foreign Business Act.