Legal article

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Foreign business license in Thailand: the restricted lists, licenses, certificates and minimum capital

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> This article is general legal information, not a legal opinion on any specific matter. Each matter must be assessed on its own facts and evidence. The latest online version is at https://eksiamtradeinvestlaw.com/en/services/thailand-market-entry/

Key points

- A company registered in Thailand is a foreigner when foreigners hold at least one half of its capital shares or have invested at least one half of its total capital, and section 4 (4) counts holdings through another foreign juristic person.[1]
- Section 8 sorts restricted businesses into three tiers: List One is closed, List Two needs the Minister's permission with Cabinet approval, and List Three needs the Director-General's permission with the approval of the Foreign Business Commission.[3]
- Section 17 requires a decision within sixty days from the filing date, and a refusal must state its reasons clearly.[7]
- BOI-promoted companies, Industrial Estate permit holders and treaty investors obtain a certificate under section 11 or section 12, which must be issued within thirty days.[10,11]

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- Minimum capital under section 14 is at least THB 2 million, and at least THB 3 million for each business that requires permission under the annexed lists.[12]
- Operating without permission is an offense under section 37 and the court must order the business to cease; Supreme Court Judgment No. 3618/2566 treats a judgment without a daily fine as incomplete.[14,15]

Who is a foreigner, and when a Thai company becomes one

Section 4 of the Foreign Business Act B.E. 2542 (1999) treats a juristic person registered in Thailand as a foreigner when foreigners hold at least one half of its capital shares or have invested at least one half of its total capital, and it counts holdings through another foreign juristic person.[1] Registration in Thailand does not settle the question.

The first question for any foreign investor is therefore not how to obtain a license, but whether the company to be set up is a "foreigner" under the Act at all. If it is not, the restrictions in the annexed lists do not apply. If it is, every activity the company carries on must be placed in the correct list. Section 4 sets out four categories of foreigner, and for structuring purposes the important ones are (3) (a) and (4).[1]

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> Foreign Business Act B.E. 2542 (1999), section 4 (extract: definitions of "foreigner" and "capital") (BOI English translation)
>
> "foreigner" means:
>
> (1) a natural person who is not of Thai nationality;
>
> (2) a juristic person not registered in Thailand;
>
> (3) a juristic person registered in Thailand, being of the following descriptions:
>
> (a) being a juristic person at least one half of capital shares of which are held by persons under (1) or (2) or a juristic person in which investment has been placed by the persons under (1) or (2) in the amount at least equivalent to one half of the total capital thereof;
>
> (b) being a limited partnership or a registered ordinary partnership the managing partner or the manager of which is the person under (1);
>
> (4) a juristic person registered in Thailand at least one half of the capital shares of which are held by persons under (1), (2) or (3) or a juristic person in which investment has been placed by the persons under (1), (2) or (3) in the amount at least equivalent to one half of the total capital thereof;
>
> "capital" means a registered capital of a limited company or a paid-up capital of a public limited company or money invested in a partnership or a juristic person by partners or members thereof;

Two phrases need to be read in full. The first, "at least one half of capital shares," is measured against capital, and section 4 defines the "capital" of a limited company as its registered capital. It is not measured by votes at a shareholders' meeting. A structure in which Thai shareholders hold preference shares amounting to more than half of the capital therefore falls outside this limb, even if voting rights give the foreign side control. The second phrase, investment "in the amount at least equivalent to one half of the total capital," is an economic test that is not tied to the figures in the shareholder register. It is this second test that the Thai courts apply when the money actually invested does not match the registered capital.

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> Supreme Court Judgment No. 2252/2560
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> A company registered in the British Virgin Islands held 7,000 shares worth THB 700,000 in a Thai company formed to develop land in Phuket, out of registered capital of THB 2,000,000, which is less than one half. It had, however, transferred THB 129,000,000 into the company as its real investment. The Supreme Court held that the real capital of the company belonged to the foreign investor in excess of one half of the investment, so both the company and the investor were operating a land trading business, which is in List One. As a result, the foreign investor was not an injured person in law when it brought a criminal complaint against the Thai directors over the management of the company.[2]

The case gives two lessons to anyone designing a structure. First, the court looks through registered capital to the money actually put in. Shareholder loans or share premium that function as capital may be counted as "investment" under section 4 (3) (a). Second, foreign status does not only carry criminal risk; it can also cost the investor its standing to use the courts. A structure in which Thai shareholders hold more than half only on paper, while all the money comes from abroad, does not reduce the risk under this Act. It moves the risk to a place the investor cannot control.

Section 4 (4) extends the definition to multi-tier holdings. If Company A, registered in Thailand, is a foreigner under (3) and holds one half or more of Company B, then Company B is also a foreigner, even if every shareholder of Company B is a Thai juristic person. An investor who sets up a Thai holding company to own several operating companies must check the capital ratio at every tier, not only at the top, and must check again whenever capital is increased, shares are transferred or a new joint-venture partner comes in, because foreign status can change on the day that change is registered.

The annexed lists: three tiers and three different routes

Section 8 sorts businesses restricted for foreigners into three lists. List One is closed with no license route, List Two may be operated with the permission of the Minister and the approval of the Cabinet, and List Three may be operated with the permission of the Director-General of the Department of Business Development and the approval of the Foreign Business Commission.[3]

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> Foreign Business Act B.E. 2542 (1999), section 8 (BOI English translation)
>
> "Subject to section 6, section 7, section 10 and section 12:
>
> (1) no foreigner may operate such businesses stricto sensu not permissible to foreigners by special reason, as prescribed in List One;
>
> (2) no foreigner may operate such businesses related to national safety or security, businesses having impacts on arts, culture, traditions, customs and folklore handicrafts or businesses having impacts on natural resources or the environment, as prescribed in List Two, unless upon obtaining permission from the Minister with the approval of the Council of Ministers;
>
> (3) no foreigner may operate such businesses in respect of which Thai nationals are not yet ready to compete with foreigners, as prescribed in List Three, unless upon obtaining permission from the Director-General with the approval of the Commission."

The opening words of section 8, "Subject to section 6, section 7, section 10 and section 12," show that all three tiers carry built-in exceptions. Sections 10 and 12 are the certificate routes discussed below. The closing words of sub-sections (2) and (3) identify who decides and whose approval is needed, which directly sets the timetable and the difficulty of an application. A List Two application must go to the Cabinet, so it is a policy process rather than a check of qualifications. A List Three application is handled by the Department of Business Development and needs the approval of the Commission.[3]

List Three is the broadest list, and its final item (21) covers all other service businesses except those exempted by ministerial regulation. A foreign investor carrying on trade or services should therefore check this list first. The items that concern trade and services directly are these:[4]

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> Foreign Business Act B.E. 2542 (1999), List Three (selected items, BOI English translation)
>
> "Businesses in respect of which Thai nationals are not ready to compete with foreigners
>
> (11) Brokerage or agency businesses, with the exception of:
>
> (b) being a broker or an agent in the sale, purchase or procurement of goods or services necessary for the production or the provision of services amongst affiliated enterprises;
>
> (c) being a broker or an agent in the sale or purchase, procurement, distribution or acquisition of domestic and foreign markets for the distribution of domestically manufactured or imported goods, which is in character the operation of international trade, with the minimum capital of one hundred million Baht or upwards from foreigners
>
> (14) Retail sale of goods of all types with the total minimum capital in the amount lower than one hundred million Baht or with the minimum capital of each store in the amount lower than twenty million Baht
>
> (15) Wholesale of all types with the minimum capital of each store in the amount lower than one hundred million Baht
>
> (21) Other service businesses, with the exception of service businesses as prescribed in the Ministerial Regulation"

Item (21), "other service businesses," calls for particularly careful review. A company set up to sell goods that also earns income from installation, maintenance, consulting or leasing space is operating a service business too, and each type of service must be checked against the exemptions in the Ministerial Regulation. The Ministerial Regulation listing service businesses that do not need permission has been amended several times. The list that applies must be read in its latest consolidated form on the date the activity is to start, not from a summary prepared earlier.

Items (14) and (15) use minimum capital, not the type of goods, as the dividing line. Retail leaves List Three only when total minimum capital is at least THB 100 million and minimum capital per store is at least THB 20 million, because the list joins the two triggers with "or": failing either one still requires permission. An investor planning many outlets with modest

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capital per store must therefore calculate store by store. Item (11) (c) exempts a broker or agent whose distribution business is in character international trade, with minimum capital of THB 100 million or more from foreigners.

List Two has an additional condition in section 15: Thai nationals or non-foreign juristic persons must hold at least forty percent of the shares, and at least two-fifths of the directors must be Thai, although the Minister, with Cabinet approval, may reduce the shareholding to not less than twenty-five percent. This makes List Two businesses, such as domestic transportation in Chapter 1, joint ventures with a Thai party by design rather than businesses a foreigner may own outright. [5]

The foreign business license: criteria, timing and conditions

Section 17 requires an application for a foreign business license to be filed with the Minister or the Director-General and decided within sixty days of filing.[7] The criteria are in section 5, which include employment, technology transfer and research and development.[6] A refusal must be given in writing with its reasons stated clearly.[7]

Section 5 is the provision every application has to answer, even though no form asks directly whether the business satisfies section 5. It requires the authorities to weigh the advantages and disadvantages of permission across a range of state interests.[6]

> Foreign Business Act B.E. 2542 (1999), section 5 (BOI English translation)
>
> "In granting permission to foreigners for the operation of businesses under this Act, regard shall be had to advantageous and disadvantageous effects on national safety and security, economic and social development of the country, public order or good morals, national values in arts, culture, traditions and customs, natural resources conservation, energy, environmental preservation, consumer protection, sizes of undertakings, employment, technology transfer and research and development."

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Because section 8 (3) explains List Three as covering businesses in which "Thai nationals are not yet ready to compete with foreigners," a persuasive application shows that permission will not take the market the law means to protect from Thai operators, but will add something the Thai market lacks: technology transferred to Thai staff, skilled employment, or a link between Thai producers and the supply chain of a foreign group. A business description that says only "consulting services to customers in Thailand" answers section 5 poorly compared with one that identifies the specific services, the customers, the number of Thai employees and the training plan.

Section 17 sets the timetable and the duty to give reasons as follows:[7]

> Foreign Business Act B.E. 2542 (1999), section 17, paragraph one and paragraph five (BOI English translation)
>
> "In applying for permission for the operation of a business, the foreigner shall file an application to the Minister or the Director-General in accordance with the rules and procedures prescribed in the Ministerial Regulation; and the Council of Ministers, in the case of businesses in List Two, or the Director-General, in the case of businesses in List Three, shall complete the consideration as to whether to give approval or grant permission, as the case may be, within the period of sixty days as from the date of the filing of the application. In the case where, with respect to the consideration by the Council of Ministers as to whether to give approval, there exists an inevitable cause preventing the Council of Ministers from completing its consideration within such period of time, that period may be extended as is necessary, provided that the extension shall not be in excess of sixty days as from the expiration thereof.
>
> In the case where the Director-General refuses to grant permission to a foreigner for the operation of businesses in List Three, the Director-General shall, in writing and within fifteen days, notify such foreigner of the refusal to grant permission and shall also make a clear indication of the reason for such refusal to grant permission. Such foreigner has the right to lodge with the Minister an appeal against the order refusing to grant permission, and the provisions of section 20 shall apply mutatis mutandis."

The sixty days run "from the date of the filing of the application," and paragraph one ties filing to the rules and procedures in the Ministerial Regulation. An incomplete application is therefore likely to be returned for correction or additional documents before consideration moves forward,

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so preparing a complete file before filing has a direct effect on the opening date of the business. For List Two, the Cabinet may extend the period by up to sixty days, so the total may reach 120 days before the further fifteen days for issuing the license under paragraph two.

The duty in paragraphs four and five to give “a clear indication of the reason” is the applicant's most important procedural safeguard. A refusal under List Three may be appealed to the Minister, with section 20 applying mutatis mutandis. How strong an appeal is depends on whether the stated reasons can be answered, so an applicant should keep a record of every explanation and every additional document submitted from the start, to show that the facts relied on as grounds for refusal have already been addressed.

When granting permission, the Minister or the Director-General may impose conditions under Ministerial Regulations issued under section 18, covering the capital-to-loan ratio, the number of foreign directors who must reside in Thailand, the amount and holding period of minimum capital, technology or property, and other necessary conditions.[8] These conditions bind the company for the life of the license. Under section 19, failure to comply with a condition under section 17 paragraph three allows the Director-General to order compliance in writing within a reasonable period; if the licensee fails to comply without reasonable cause, the Director-General may temporarily suspend the license or the business for up to sixty days, and if the matter is still not remedied when that period ends, the Director-General considers revoking the license or refers it to the Minister for revocation. The company's finance and legal teams therefore need a tracked list of conditions, not a license kept in a file.

Section 21 paragraph one provides that “a licence shall be valid for an indefinite period until cessation by the licence grantee of the permitted business.” A license does not expire and does not need renewal, unlike a certificate, which lasts only as long as the right it is based on. The other side of this is that a license is tied to the business it names. When the company adds a new activity that falls in an annexed list, it needs separate permission for that activity. Paragraph two also requires the license to be displayed openly at the place of business, and failure to do so is subject to a fine under section 39.[9]

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Certificates instead of a license: treaties, BOI promotion and industrial estates

A foreigner operating under temporary permission from the Thai government or under a treaty (section 10) obtains a certificate under section 11.[10] A BOI-promoted company or an Industrial Estate permit holder obtains a certificate under section 12.[11] The Director-General must issue the certificate within thirty days, and the section 5 assessment does not apply.

The certificate route differs from a license in substance. A license is a discretionary decision on whether a foreigner should be allowed to operate a business. A certificate confirms a right that already exists from another source. Section 11 therefore speaks of a foreigner who "shall notify" rather than applies, and it obliges the Director-General to issue the certificate "without delay but no later than thirty days," unless the notification does not follow the prescribed rules or does not fall within section 10.[10]

> Foreign Business Act B.E. 2542 (1999), section 11 (BOI English translation)
>
> "Foreigners under section 10 who intend to operate businesses specified in the Lists annexed hereto shall notify the Director-General in accordance with the rules and procedures prescribed in the Ministerial Regulation in order to obtain certificates, and the Director-General shall issue certificates to such foreigners without delay but no later than thirty days as from the date of receipt of their written notification, unless the Director-General considers that the notification is not in accordance with the rules and procedures prescribed in the Ministerial Regulation or that it is not in accordance with section 10, in which case the Director-General shall notify such foreigners thereof without delay but no later than thirty days as from the date of receipt of their written notification.
>
> The certificates shall also indicate conditions prescribed by the Government or prescribed in the treaty."

Section 10 paragraph two covers foreigners operating annexed-list businesses by virtue of a treaty to which Thailand is a party or by which it is bound. They are exempt from sections 5, 8, 15, 17 and 18, but are governed by the provisions and conditions of the treaty. Using this route always requires reading the treaty itself, because the scope of the right comes from the treaty, not from the Act, and under section 11 paragraph two the certificate must state the conditions the treaty prescribes.

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Section 12 links the Act to investment promotion. When a promoted business is in List Two or List Three, the promoted company notifies the Director-General to obtain a certificate and is exempt from the Act, except sections 21, 22, 39, 40 and 42, for as long as promotion lasts.[11] The conditions of a promotion certificate and the consequences when promotion ends are covered on our page on BOI investment promotion in Thailand. The point to plan for from day one is that the section 12 exemption lasts exactly as long as promotion. When BOI rights end, any List Three activity that continues needs a license under section 8 (3).

Choosing between a license and a section 12 certificate is therefore not a question of which is faster. It is a question of whether the company's activity is an eligible promoted activity and whether the company can live with the conditions of the promotion certificate. An activity outside the BOI list of eligible activities, such as retail below the capital thresholds, never had this option.

Minimum capital for foreigners and the cost of falling short

Section 14 requires a foreigner's minimum capital to start a business in Thailand to be not less than the Ministerial Regulation prescribes and in any event not less than THB 2 million, rising to at least THB 3 million for each business that requires permission under the annexed lists.[12] Breach is punishable with fines under section 38.[13]

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> Foreign Business Act B.E. 2542 (1999), section 14 (BOI English translation)
>
> "The minimum capital to be used by a foreigner for the commencement of the operation of a business in Thailand shall not be less than that prescribed in the Ministerial Regulation, provided that it shall not be less than two million Baht.
>
> In the case where the business of the foreigner under paragraph one is the business requiring permission as specified in the Lists annexed hereto, the minimum capital as prescribed in the Ministerial Regulation for each business shall not be less than three million Baht.
>
> The Ministerial Regulation issued under the provisions of this section may also prescribe the time within which the minimum capital must be brought or remitted into Thailand.
>
> The provisions of this section shall not apply to the case where the foreigner uses money or property derived as revenues from the original business already in operation in Thailand for commencement of another business or for subscribing to shares or investing in any other undertaking or in any other juristic person."

Section 14 applies to every foreigner, not only to those operating listed businesses. A foreign company operating outside the lists, for example in certain types of manufacturing, still needs the minimum capital in paragraph one. Paragraph two adds a threshold for businesses that need permission and applies it "for each business," so a company seeking permission for three activities must calculate minimum capital activity by activity.[12]

The section 4 definition of "minimum capital" uses the foreigner's capital for a juristic person registered in Thailand, and foreign currency brought in at the start of operations for a foreign juristic person or a natural person. A branch of a foreign company must therefore show that money was actually brought in, while a Thai company that is a foreigner shows its registered capital. Paragraph three allows the Ministerial Regulation to set a deadline for bringing the money in, and paragraph four exempts revenue from an existing Thai business reinvested in a new business. That exemption allows a group with retained earnings in Thailand to expand without bringing in new money from abroad.

Section 38 imposes a fine of THB 100,000 to THB 1 million, plus a daily fine of THB 10,000 to THB 50,000 for as long as the violation continues, for breach of section 14 or of a minimum-capital condition under section 18 (3).[13] The daily fine means a capital shortfall left in place for a

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long time builds up a liability far faster than an offense with a single fine. A company that reduces its capital, or whose accumulated losses force a capital restructuring, should check the effect on minimum capital before making the registration.

Criminal penalties and civil consequences of operating without permission

A foreigner operating in breach of section 8 faces up to three years' imprisonment, a fine of THB 100,000 to THB 1 million, or both under section 37, and the court must order the business to cease.[14] Thai nominee shareholders are liable under section 36,[16] directors who connive are liable under section 41,[17] and contracts made to evade the Act are void.[18]

> Foreign Business Act B.E. 2542 (1999), section 37 (BOI English translation)
>
> "Any foreigner who operates a business in violation of section 6, section 7 or section 8 shall be liable to imprisonment for a term not exceeding three years or to a fine of one hundred thousand Baht to one million Baht or to both, and the Court shall order the cessation of the business operation or the cessation of the undertaking or order the cessation of shareholding or partnership, as the case may be. In the case of violation of the order of the Court, the violator shall be liable to a fine at the daily rate of ten thousand Baht to fifty thousand Baht throughout the period of the violation."

The words "the Court shall order the cessation of the business operation or the cessation of the undertaking" are mandatory, not discretionary. This order means a case does not end with a fine: the business ordered to stop must stop or be restructured lawfully, and if it does not, the daily fine starts to run at once.[14]

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> Supreme Court Judgment No. 3618/2566
>
> Defendant company 1 and defendants 2 to 4 were convicted under section 8 (3) and section 37 of operating a List Three business without permission, and defendants 5 and 6 were convicted under section 36. The court of first instance ordered the business or undertaking to cease and the Thai nationals to stop holding shares, but did not set a fine for violating the court's order. The Supreme Court held that such a judgment was "incomplete." The daily fine of THB 10,000 imposed by the Court of Appeal simply completed the enforcement condition required by law. The defendants had to pay the fine from the date the first-instance judgment was read, 28 November 2018, until the company registered its dissolution on 2 March 2020.[15]

The case gives figures that any executive can follow. About one year and three months passed between the first-instance judgment and the registration of dissolution. At the minimum daily rate of THB 10,000, the fine for that period alone was several times the maximum fine for the principal offense. The Supreme Court also tied the daily fine to the date the first-instance judgment became enforceable under section 188 of the Criminal Procedure Code. A business ordered to cease should not assume that waiting for an appeal suspends the liability, and should decide from the day the first-instance judgment is read whether to stop the activity or restructure lawfully.

Thai nominee shareholders are liable under section 36, which punishes both a Thai national "who acts as a foreigner's nominee in holding shares" and "a foreigner who allows such act to be committed," with the same penalties as section 37.[16] Section 41 extends liability to directors, partners and persons authorized to act for the juristic person who "connive at the commission of such offences or fail to take reasonable action in preventing such offences."[17] The second limb means that a foreign director who claims not to have known the details of the shareholding must still show that reasonable action was taken. Nominee liability and the case law on who may complain are covered in depth in the article How much of a Thai company can a foreigner own? on our corporate law website.

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> Supreme Court Judgment No. 5457/2560
>
> A Japanese investor bought the whole of a Thai company. He and his child held 49 percent, six Thai nationals held 51 percent as nominees, and a THB 19,500,000 loan agreement disguised payment of the price. When the investor sued to recover the money, the Supreme Court held that the company was a foreigner under section 4 (3) (a) and (4), that the sale of the business was void under section 150 of the Civil and Commercial Code, and that the money paid could not be recovered under section 411. The Court added that this was not a case of a foreign juristic person that could have applied for permission to operate a prohibited business, because the permission route is open only to a foreign juristic person acting in good faith.[18]

This case answers the question investors often ask after a nominee structure is already in place: can a license be obtained after the fact to fix it? The Court separated those who enter in good faith and apply under section 17 from those who set out to evade the law from the start. The latter lose civil protection and cannot claim to stand in the position of an applicant. In practice, correcting a defective structure starts with stopping or separating the listed activity and building a new structure that does not depend on nominees, before applying for a license for the activity the company wants to continue.

Comparative law: foreign investment screening in the United States, the European Union and the United Kingdom

Foreign investment screening in the United States, the European Union and the United Kingdom targets only transactions that affect security, unlike Thailand's list-based system.[19,20,22] Yet foreign courts have set principles on reasons for decisions and on looking through shareholder structures that help explain sections 4 and 17 of the Thai Act.[19,21]

In the United States, the Committee on Foreign Investment in the United States (CFIUS) reviews transactions that may affect national security, and the President may prohibit them. In Ralls Corporation v. Committee on Foreign Investment in the United States (D.C. Circuit, decided July 15, 2014), Ralls, a Delaware company owned by two Chinese nationals, acquired four Oregon wind farm project companies, three located within seven miles of restricted Navy airspace and one inside it. The President prohibited the transaction and ordered divestment within ninety

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days. The court held that the statute did not bar judicial review of the procedural due process claim, and that due process required at a minimum that the affected party be informed of the official action, be given access to the unclassified evidence on which the official acted, and be given an opportunity to rebut that evidence.[19]

The European Union set a framework for screening foreign direct investment in Regulation (EU) 2019/452. Article 3 allows Member States to maintain or adopt screening mechanisms on grounds of security or public order and requires rules, procedures and timeframes to be transparent and non-discriminatory between third countries.[20] In Xella Magyarország (Case C-106/22, Court of Justice of the European Union, 13 July 2023), a Hungarian company within a group whose ultimate parent was registered in Bermuda was barred from acquiring another Hungarian company that quarried gravel, sand and clay, on the ground of securing raw materials for the construction sector. The Court held that the freedom of establishment precludes a screening mechanism used to prohibit a transaction on that ground, because securing local supply of construction materials is not a fundamental interest of society capable of justifying the restriction.[21]

The United Kingdom's National Security and Investment Act 2021 requires certain transactions to be notified in advance, and section 13(1) provides that a notifiable acquisition completed without the Secretary of State's approval "is void."[22] English law thus writes the civil consequence into the statute itself, while Thai law reaches the same result through section 150 of the Civil and Commercial Code, as the Supreme Court did in Judgment No. 5457/2560.

Returning to Thai law, the comparison yields three points. First, Xella looks through a locally registered company to the party abroad with decisive influence, the same logic as section 4 (4) and Supreme Court Judgment No. 2252/2560, so an investor should not expect a Thai intermediate company to change its status. Second, Ralls confirms that even where the state has broad discretion, an investor is entitled to know the reasons and to answer them. Thai law already gives that right in section 17 paragraphs four and five, and it should be used fully on appeal. Third, Thailand screens by business category, which is broader than screening only security-sensitive transactions, so classifying activities correctly from the outset matters more in Thailand than in any of these three systems.

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Law and economics: regulation of entry and the liability of foreignness

In law and economics terms, List Three and the section 17 license are a regulation of entry that imposes transaction costs on newcomers. Djankov and co-authors (2002) found that countries with heavier entry regulation do not deliver better quality goods or services, so an investor should treat a license as a cost that can be measured.[23]

Djankov, La Porta, Lopez-de-Silanes and Shleifer collected data on the number of procedures, time and official costs a start-up must incur before it can operate legally in dozens of countries. They found that countries with heavier entry regulation have higher corruption and larger unofficial economies, but not better quality public or private goods. They concluded that the evidence does not support the public interest ("helping hand") theory of entry regulation and is consistent with the theory that regulation benefits those who hold power ("grabbing hand").[23] The study covers business start-up in general, not the Thai annexed lists, so its findings serve as an analytical frame, not as a measurement for Thailand.

Read through this frame, the Act contains several features that reduce the cost of entry. Section 17 limits the time for a decision and requires reasons. Sections 11 and 12 require certificates to be issued within thirty days. Section 9 paragraph two requires the Commission to review the annexed lists at least once a year, and item (21) of List Three lets a Ministerial Regulation exempt service businesses one category at a time. Yet the design also adds avoidable cost. Item (21) requires permission for every service business not exempted by Ministerial Regulation, so the investor must show that its activity will not harm Thai operators, rather than the state having to identify which services need protection. Allocating the burden this way adds information costs to the party that knows the Thai market least.

International business research explains the other side of this cost. Zaheer (1995) studied the foreign exchange trading rooms of Western and Japanese banks in New York and Tokyo in 24 matched pairs, found evidence of a "liability of foreignness," meaning a disadvantage foreign firms face compared with local firms, and found that imitating local firms' practices is difficult.[24] In Thailand, part of the liability of foreignness is created directly by law: classifying activities, applying for permission and meeting minimum capital. An investor who cuts this cost through a

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nominee structure is trading a measurable cost for an unmeasurable risk, and Supreme Court Judgment No. 5457/2560 shows that this risk includes losing the entire investment without any right to recover it.

The practical consequence for an investor is that the cost of a license should be set systematically against the alternatives: the waiting time before revenue, the minimum capital tied up, advisory and translation costs, and the cost of complying with conditions over the life of the license. With these numbers on the table, the choice between a license, a certificate through BOI promotion, or reshaping activities to fall outside the lists becomes a business decision that can be checked.

Assessing your market entry route before you incorporate

We assess a market entry route under the Foreign Business Act B.E. 2542 (1999) in six steps, from foreign status under section 4 and classification under section 8, through the certificate routes and minimum capital, to post-license conditions and the draft application and supporting documents.

1. Foreign status. Shareholding at every tier, registered capital, actual investment, and plans for capital increases or new partners, under section 4 (3) and (4).
2. Classification. Every revenue stream the company will have, matched against List One, List Two, List Three and the Ministerial Regulation exempting service businesses in force on the date of assessment.
3. Route. A section 17 license compared with a section 11 or section 12 certificate and with reshaping activities to fall outside the lists, including what happens when the right behind a certificate ends.
4. Minimum capital and capital structure. Minimum capital per activity under section 14 and the Ministerial Regulation, the timetable for bringing funds in, and the effect on foreign status.

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5. Application and section 5 case. The business description, hiring plan, technology transfer and benefits to the Thai economy, framed to answer the criteria the authorities apply.

6. Post-license conditions. A list of section 18 conditions, the display and notification duties under sections 21 and 22, and the points to recheck whenever the structure changes.

A 45-minute consultation on a single matter is THB 4,900 and suits an investor who wants to know whether its activity needs a license and which routes are available. For a full assessment, preparation of an application or filing of a license application, we quote by scope, confirming deliverables, timing and fees in writing before work begins, with government fees and translation costs shown separately. For joint-venture agreements and contracts with foreign counterparties that need to be prepared alongside, see International contract review.

Questions before instructing us

Questions foreign investors and Thai joint-venture partners often ask before deciding to apply for a foreign business license in Thailand and before engaging us to assess a market entry route. Each answer summarizes sections 4, 8, 12, 14 and 17 of the Foreign Business Act B.E. 2542 (1999) quoted above.

When is a foreign business license required in Thailand?

When a company or person is a foreigner under section 4 and operates a business in List Two or List Three annexed to the Foreign Business Act B.E. 2542 (1999), as section 8 provides, unless it holds a certificate under section 11 or section 12. List One businesses have no license route.

How long does a foreign business license take?

Section 17 requires a decision within sixty days of filing and issue of the license within fifteen days after approval. For List Two, the Cabinet may extend its consideration by up to sixty days. Actual timing depends on how complete the file is on the day of filing.

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Does a company with less than 50% foreign shareholding need a license?

As a rule, no, because it is not a foreigner under section 4. But if the foreign side's actual investment exceeds one half of total capital, or Thai shareholders hold as nominees, the courts can treat the company as a foreigner, as in Supreme Court Judgments No. 2252/2560 and 5457/2560.

What is the minimum capital for a foreign company in Thailand?

Section 14 requires not less than the Ministerial Regulation prescribes and in any event not less than THB 2 million, and not less than THB 3 million for each business requiring permission under the annexed lists. Breach is subject to a fine and a daily fine under section 38.

Does a BOI-promoted company still need a foreign business license?

Not for a promoted business in List Two or List Three, but it must notify the Department of Business Development to obtain a certificate under section 12, which is effective only for as long as promotion lasts.

How are fees for an assessment and application set?

We start with a 45-minute consultation on a single matter at THB 4,900. For a full assessment or a license application, we quote by scope in writing before work begins.

Who does the work

Market entry assessments and foreign business license work are the responsibility of Eksiam Chaisorn, Legal Consultant, founder and Managing Director of Eksiam & Partners Co., Ltd., who advises on foreign investment under the Foreign Business Act B.E. 2542 (1999) and on investment promotion.

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Education relevant to this work: Master's level, Master of Laws (LL.M.) program, International Law (International Investment Law), Faculty of Law, Chulalongkorn University; Master's level, Master of Laws (LL.M.) program, International Trade Law, Faculty of Law, Thammasat University; and Master's level, Master of Laws (LL.M.) program, Financial and Tax Law, Faculty of Law, Chulalongkorn University. Full profile and qualifications

Notes

1. Foreign Business Act B.E. 2542 (1999), section 4: “In this Act, “foreigner” means: (1) a natural person who is not of Thai nationality; (2) a juristic person not registered in Thailand; (3) a juristic person registered in Thailand, being of the following descriptions: (a) being a juristic person at least one half of capital shares of which are held by persons under (1) or (2) or a juristic person in which investment has been placed by the persons under (1) or (2) in the amount at least equivalent to one half of the total capital thereof; (b) being a limited partnership or a registered ordinary partnership the managing partner or the manager of which is the person under (1); (4) a juristic person registered in Thailand at least one half of the capital shares of which are held by persons under (1), (2) or (3) or a juristic person in which investment has been placed by the persons under (1), (2) or (3) in the amount at least equivalent to one half of the total capital thereof; For the purpose of this definition, shares of a limited company represented by share certificates issued to bearers are deemed as shares held by foreigners, unless otherwise provided by the Ministerial Regulation. “capital” means a registered capital of a limited company or a paid-up capital of a public limited company or money invested in a partnership or a juristic person by partners or members thereof; “minimum capital” means, in the case where the foreigner is a juristic person registered in Thailand, a capital of a foreigner; and means, in the case where a foreigner is a juristic person not registered in Thailand or is a natural person, foreign currencies brought and used by foreigners at the commencement of the operation of businesses in Thailand;” (English translation published by the Thailand Board of Investment, boi.go.th, quoted verbatim including the translator's British spelling; checked 5 October 2026. The translation follows the Act as enacted in 1999; the Thai text in the latest consolidated version on the Office of the Council of State database, searchlaw.ocs.go.th, checked 4 October 2026, is authoritative.)

2. Supreme Court Judgment No. 2252/2560 (2017). The plaintiff, a juristic person registered in the British Virgin Islands, held 7,000 shares of THB 100 each in a company formed to develop land in Phuket, out of registered capital of THB 2,000,000, but transferred THB 129,000,000 as its actual investment. The Supreme Court held that although the plaintiff held less than one half of the shares on the register, the real capital of the company belonged to the plaintiff in excess of one half of the investment, so that both the company and the plaintiff were operating a land trading business in List One. The plaintiff was therefore not an injured person in law for offenses under the Act on Offenses Relating to Registered Partnerships, Limited Partnerships, Limited Companies, Associations and Foundations B.E. 2499 (1956) and section 353 of the Penal Code. (Thai full text read on deka.supremecourt.or.th, 4 October 2026; summary by the firm.)

3. Foreign Business Act B.E. 2542 (1999), section 8: “Subject to section 6, section 7, section 10 and section 12: (1) no foreigner may operate such businesses stricto sensu not permissible to foreigners by special reason, as prescribed in List One; (2) no foreigner may operate such businesses related to national safety or security, businesses having impacts on arts, culture, traditions, customs and folklore handicrafts or businesses having impacts on natural

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resources or the environment, as prescribed in List Two, unless upon obtaining permission from the Minister with the approval of the Council of Ministers; (3) no foreigner may operate such businesses in respect of which Thai nationals are not yet ready to compete with foreigners, as prescribed in List Three, unless upon obtaining permission from the Director-General with the approval of the Commission." (English translation published by the Thailand Board of Investment, boi.go.th, quoted verbatim including the translator's British spelling; checked 5 October 2026. The translation follows the Act as enacted in 1999; the Thai text in the latest consolidated version on the Office of the Council of State database, searchlaw.ocs.go.th, checked 4 October 2026, is authoritative.)

4. Foreign Business Act B.E. 2542 (1999), List Three, "Businesses in respect of which Thai nationals are not ready to compete with foreigners", items (11) Brokerage or agency businesses, with the exception of: (b) being a broker or an agent in the sale, purchase or procurement of goods or services necessary for the production or the provision of services amongst affiliated enterprises; (c) being a broker or an agent in the sale or purchase, procurement, distribution or acquisition of domestic and foreign markets for the distribution of domestically manufactured or imported goods, which is in character the operation of international trade, with the minimum capital of one hundred million Baht or upwards from foreigners, (14) Retail sale of goods of all types with the total minimum capital in the amount lower than one hundred million Baht or with the minimum capital of each store in the amount lower than twenty million Baht, (15) Wholesale of all types with the minimum capital of each store in the amount lower than one hundred million Baht, (21) Other service businesses, with the exception of service businesses as prescribed in the Ministerial Regulation (English translation published by the Thailand Board of Investment, boi.go.th, quoted verbatim including the translator's British spelling; checked 5 October 2026. The translation follows the Act as enacted in 1999; the Thai text in the latest consolidated version on the Office of the Council of State database, searchlaw.ocs.go.th, checked 4 October 2026, is authoritative.)

5. Foreign Business Act B.E. 2542 (1999), section 15: "A foreigner which is a juristic person may operate any business specified in List Two only where not less than forty percent of its shares are held by Thai nationals or juristic persons which are not foreigners under this Act, save that, where there is a reasonable cause, the Minister with the approval of the Council of Ministers may reduce the proportion in this matter, provided that the required shareholding must not be less than twenty five percent and that not less than two-fifths of the total number of its directors must be Thai nationals." (English translation published by the Thailand Board of Investment, boi.go.th, quoted verbatim including the translator's British spelling; checked 5 October 2026. The translation follows the Act as enacted in 1999; the Thai text in the latest consolidated version on the Office of the Council of State database, searchlaw.ocs.go.th, checked 4 October 2026, is authoritative.)

6. Foreign Business Act B.E. 2542 (1999), section 5: "In granting permission to foreigners for the operation of businesses under this Act, regard shall be had to advantageous and disadvantageous effects on national safety and security, economic and social development of the country, public order or good morals, national values in arts, culture, traditions and customs, natural resources conservation, energy, environmental preservation, consumer protection, sizes of undertakings, employment, technology transfer and research and development." (English translation published by the Thailand Board of Investment, boi.go.th, quoted verbatim including the translator's British spelling; checked 5 October 2026. The translation follows the Act as enacted in 1999; the Thai text in the latest consolidated version on the Office of the Council of State database, searchlaw.ocs.go.th, checked 4 October 2026, is authoritative.)

7. Foreign Business Act B.E. 2542 (1999), section 17: "In applying for permission for the operation of a business, the foreigner shall file an application to the Minister or the Director-General in accordance with the rules and procedures prescribed in the Ministerial Regulation; and the Council of Ministers, in the case of businesses in List Two, or the Director-General, in the case of businesses in List Three, shall complete the consideration as to whether to give approval or grant permission, as the case may be, within the period of sixty days as from the date of the filing of the

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application. In the case where, with respect to the consideration by the Council of Ministers as to whether to give approval, there exists an inevitable cause preventing the Council of Ministers from completing its consideration within such period of time, that period may be extended as is necessary, provided that the extension shall not be in excess of sixty days as from the expiration thereof. When the Council of Ministers has given approval or the Director-General has granted permission under paragraph one, the Minister or the Director-General shall issue a licence within fifteen days as from the date of the approval by the Council of Ministers or the permission by the Director-General. In granting permission, the Minister may, with respect to the businesses in List Two, prescribe conditions as prescribed by the Council of Ministers or as prescribed in the Ministerial Regulation issued by virtue of section 18, or the Director-General may, with respect to the businesses in List Three, prescribe conditions as prescribed in the Ministerial Regulation issued by virtue of section 18. In the case where the Council of Ministers refuses to give approval to a foreigner for the operation of businesses in List Two, the Minister shall, in writing and within thirty days, notify such foreigner of the refusal to give approval and shall also make a clear indication of the reason for such refusal to give approval. In the case where the Director-General refuses to grant permission to a foreigner for the operation of businesses in List Three, the Director-General shall, in writing and within fifteen days, notify such foreigner of the refusal to grant permission and shall also make a clear indication of the reason for such refusal to grant permission. Such foreigner has the right to lodge with the Minister an appeal against the order refusing to grant permission, and the provisions of section 20 shall apply mutatis mutandis." (English translation published by the Thailand Board of Investment, boi.go.th, quoted verbatim including the translator's British spelling; checked 5 October 2026. The translation follows the Act as enacted in 1999; the Thai text in the latest consolidated version on the Office of the Council of State database, searchlaw.ocs.go.th, checked 4 October 2026, is authoritative.)

8. Foreign Business Act B.E. 2542 (1999), section 18: "The Minister, with the recommendation of the Commission, has the power to issue Ministerial Regulations prescribing any of the following conditions to be observed by foreigners who are licence grantees: (1) the ratio of the capital to loans for the operation of permitted businesses; (2) the number of foreign directors who must have a domicile or residence in the Kingdom; (3) the amount of, and the period of time for maintaining, the minimum capital in the country; (4) technology or property; (5) other necessary conditions." (English translation published by the Thailand Board of Investment, boi.go.th, quoted verbatim including the translator's British spelling; checked 5 October 2026. The translation follows the Act as enacted in 1999; the Thai text in the latest consolidated version on the Office of the Council of State database, searchlaw.ocs.go.th, checked 4 October 2026, is authoritative.)

9. Foreign Business Act B.E. 2542 (1999), section 21 paragraphs one and two: "Subject to section 7, section 19 and section 20, a licence shall be valid for an indefinite period until cessation by the licence grantee of the permitted business. A certificate shall be valid for such period as permitted by the Government of the Kingdom of Thailand or as prescribed by the treaty permitting the operation of the business in question or throughout the period in which the business in question is under investment promotion or under permission for the operation of the industry or the operation of trade for export, as the case may be, unless the certificate grantee ceases to operate the permitted business prior to the expiration of such period, in which case the certificate shall be valid until such cessation. The licence grantee or the certificate grantee shall display the licence or certificate at an overt location at his place of business." (English translation published by the Thailand Board of Investment, boi.go.th, quoted verbatim including the translator's British spelling; checked 5 October 2026. The translation follows the Act as enacted in 1999; the Thai text in the latest consolidated version on the Office of the Council of State database, searchlaw.ocs.go.th, checked 4 October 2026, is authoritative.) Section 39 provides a fine not exceeding THB 5,000 for failure to comply with section 21 paragraph two or three.

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10. Foreign Business Act B.E. 2542 (1999), section 11: “Foreigners under section 10 who intend to operate businesses specified in the Lists annexed hereto shall notify the Director-General in accordance with the rules and procedures prescribed in the Ministerial Regulation in order to obtain certificates, and the Director-General shall issue certificates to such foreigners without delay but no later than thirty days as from the date of receipt of their written notification, unless the Director-General considers that the notification is not in accordance with the rules and procedures prescribed in the Ministerial Regulation or that it is not in accordance with section 10, in which case the Director-General shall notify such foreigners thereof without delay but no later than thirty days as from the date of receipt of their written notification. The certificates shall also indicate conditions prescribed by the Government or prescribed in the treaty.” (English translation published by the Thailand Board of Investment, boi.go.th, quoted verbatim including the translator's British spelling; checked 5 October 2026. The translation follows the Act as enacted in 1999; the Thai text in the latest consolidated version on the Office of the Council of State database, searchlaw.ocs.go.th, checked 4 October 2026, is authoritative.)

11. Foreign Business Act B.E. 2542 (1999), section 12: “In the case where the business of the foreigner who is promoted under the law on investment promotion or granted written permission for the operation of the industry or the operation of trade for export under the law on the Industrial Estate of Thailand or under other laws is the business specified in List Two or List Three annexed hereto, such foreigner shall notify the Director-General in order to obtain a certificate. When the Director-General or the entrusted competent official has examined validity of the investment promotion certificate or written permit, the Director-General shall issue a certificate without delay but no later than thirty days as from the date of receipt of the notification of the acquisition of the investment promotion certificate or written permit, as the case may be. In this case, such foreigner shall be exempt from the application of this Act, with the exception of section 21, section 22, section 39, section 40 and section 42, throughout the period in which the business in question is under investment promotion or under permission for the operation of the industry or the operation of trade for export, as the case may be. The issuance of the certificate under paragraph one shall be in accordance with the rules and procedures as prescribed by the Director-General.” (English translation published by the Thailand Board of Investment, boi.go.th, quoted verbatim including the translator's British spelling; checked 5 October 2026. The translation follows the Act as enacted in 1999; the Thai text in the latest consolidated version on the Office of the Council of State database, searchlaw.ocs.go.th, checked 4 October 2026, is authoritative.) The BOI conditions behind the certificate are discussed on our page BOI investment promotion in Thailand.

12. Foreign Business Act B.E. 2542 (1999), section 14: “The minimum capital to be used by a foreigner for the commencement of the operation of a business in Thailand shall not be less than that prescribed in the Ministerial Regulation, provided that it shall not be less than two million Baht. In the case where the business of the foreigner under paragraph one is the business requiring permission as specified in the Lists annexed hereto, the minimum capital as prescribed in the Ministerial Regulation for each business shall not be less than three million Baht. The Ministerial Regulation issued under the provisions of this section may also prescribe the time within which the minimum capital must be brought or remitted into Thailand. The provisions of this section shall not apply to the case where the foreigner uses money or property derived as revenues from the original business already in operation in Thailand for commencement of another business or for subscribing to shares or investing in any other undertaking or in any other juristic person.” (English translation published by the Thailand Board of Investment, boi.go.th, quoted verbatim including the translator's British spelling; checked 5 October 2026. The translation follows the Act as enacted in 1999; the Thai text in the latest consolidated version on the Office of the Council of State database, searchlaw.ocs.go.th, checked 4 October 2026, is authoritative.)

13. Foreign Business Act B.E. 2542 (1999), section 38: “Any foreigner who operates a business in violation of section 14 or violates the conditions under section 18 (3) shall be liable to a fine of one hundred thousand Baht to one million Baht and to an additional fine at the daily rate of ten thousand Baht to fifty thousand Baht throughout the period of the

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violation." (English translation published by the Thailand Board of Investment, boi.go.th, quoted verbatim including the translator's British spelling; checked 5 October 2026. The translation follows the Act as enacted in 1999; the Thai text in the latest consolidated version on the Office of the Council of State database, searchlaw.ocs.go.th, checked 4 October 2026, is authoritative.)

14. Foreign Business Act B.E. 2542 (1999), section 37: "Any foreigner who operates a business in violation of section 6, section 7 or section 8 shall be liable to imprisonment for a term not exceeding three years or to a fine of one hundred thousand Baht to one million Baht or to both, and the Court shall order the cessation of the business operation or the cessation of the undertaking or order the cessation of shareholding or partnership, as the case may be. In the case of violation of the order of the Court, the violator shall be liable to a fine at the daily rate of ten thousand Baht to fifty thousand Baht throughout the period of the violation." (English translation published by the Thailand Board of Investment, boi.go.th, quoted verbatim including the translator's British spelling; checked 5 October 2026. The translation follows the Act as enacted in 1999; the Thai text in the latest consolidated version on the Office of the Council of State database, searchlaw.ocs.go.th, checked 4 October 2026, is authoritative.)

15. Supreme Court Judgment No. 3618/2566 (2023). The court of first instance convicted defendants 1 to 4 under section 8 (3) and section 37 and defendants 5 and 6 under section 36, ordered defendants 1, 3 and 4 to cease the business or undertaking and the Thai nationals to cease holding shares in defendant 1, but did not fix the fine for violating the court's order. The Supreme Court held that judgment was incomplete; the Court of Appeal's daily fine of THB 10,000 merely completed the enforcement condition required by section 37. The defendants were liable for the daily fine from 28 November 2018, the date the first-instance judgment was read, until 2 March 2020, the date defendant 1 registered its dissolution. The Court of Appeal also convicted defendants 1 to 4 under sections 36 and 41, and defendants 5 and 6 under section 41. (Thai full text read on deka.supremecourt.or.th, 4 October 2026; summary by the firm.)

16. Foreign Business Act B.E. 2542 (1999), section 36: "A Thai national or a juristic person, not being a foreigner under this Act, who assists in or aids and abets or participates in the operation of a foreigner's business specified in the Lists annexed hereto where such foreigner is not permitted to operate that business or who operates the business jointly with a foreigner in the manner holding it out as the former's sole business or who acts as a foreigner's nominee in holding shares in a partnership or a limited company or any juristic person with a view to enabling the foreigner to operate the business in circumvention or violation of the provisions of this Act, or a foreigner who allows such act to be committed by a Thai national or a juristic person that is not a foreigner under this Act, shall be liable to imprisonment for a term not exceeding three years or to a fine of one hundred thousand Baht to one million Baht or to both, and the Court shall order the cessation of the assistance or the aiding and abetting or order the cessation of the joint operation of the business or order the cessation of shareholding or partnership, as the case may be. In the case of violation of the order of the Court, the violator shall be liable to a fine at the daily rate of ten thousand Baht to fifty thousand Baht throughout the period of the violation." (English translation published by the Thailand Board of Investment, boi.go.th, quoted verbatim including the translator's British spelling; checked 5 October 2026. The translation follows the Act as enacted in 1999; the Thai text in the latest consolidated version on the Office of the Council of State database, searchlaw.ocs.go.th, checked 4 October 2026, is authoritative.)

17. Foreign Business Act B.E. 2542 (1999), section 41: "In the case where a juristic person commits offences under section 34, section 35, section 36 or section 37, directors, partners or persons with the authority to represent the juristic person, who connive at the commission of such offences or fail to take reasonable action in preventing such offences shall be liable to imprisonment for a term not exceeding three years or to a fine of one hundred thousand Baht to one million Baht or to both." (English translation published by the Thailand Board of Investment, boi.go.th,

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quoted verbatim including the translator's British spelling; checked 5 October 2026. The translation follows the Act as enacted in 1999; the Thai text in the latest consolidated version on the Office of the Council of State database, searchlaw.ocs.go.th, checked 4 October 2026, is authoritative.)

18. Supreme Court Judgment No. 5457/2560 (2017). The plaintiff, a foreigner, bought the whole business of defendant 1; the plaintiff and his child held 49 percent and six Thai nationals held 51 percent as nominees, and a THB 19,500,000 loan agreement was used to disguise payment of the price. The Supreme Court held that defendant 1 was a foreigner under section 4 (3) (a) and (4); a sale of business designed to evade the law through nominal Thai shareholding was void under section 150 of the Civil and Commercial Code, and the money paid was a performance in violation of a legal prohibition that could not be recovered under section 411. The Supreme Court reversed and dismissed the claim. (Thai full text read on deka.supremecourt.or.th, 4 October 2026; summary by the firm.)

19. Ralls Corporation v. Committee on Foreign Investment in the United States, et al., No. 13-5315, United States Court of Appeals for the District of Columbia Circuit, argued May 5, 2014, decided July 15, 2014 (Henderson, J.) govinfo.gov (official opinion read October 4, 2026).

20. Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union, Official Journal of the European Union L 79 I, 21 March 2019, Article 3(1) “In accordance with this Regulation, Member States may maintain, amend or adopt mechanisms to screen foreign direct investments in their territory on the grounds of security or public order.” Article 3(2) “Rules and procedures related to screening mechanisms, including relevant timeframes, shall be transparent and not discriminate between third countries.” eur-lex.europa.eu (checked October 4, 2026; quoted as in force when the Court decided Xella).

21. Case C-106/22, Xella Magyarország Építőanyagipari Kft. v Innovációs és Technológiai Miniszter, Court of Justice of the European Union (Second Chamber), judgment of 13 July 2023, operative part “The provisions of the TFEU on freedom of establishment must be interpreted as precluding a foreign investment filtering mechanism provided for by the legislation of a Member State by means of which a resident company which is a member of a group of companies established in several Member States, over which an undertaking of a third country has decisive influence, may be prohibited from acquiring ownership of another resident company regarded as strategic, on the ground that the acquisition harms or risks harming the national interest in ensuring the security of supply to the construction sector, in particular at the local level, with respect to basic raw materials such as gravel, sand and clay.” eur-lex.europa.eu (checked October 4, 2026).

22. National Security and Investment Act 2021 (United Kingdom), section 13(1) “A notifiable acquisition that is completed without the approval of the Secretary of State is void.” legislation.gov.uk (checked October 4, 2026).

23. Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer, “The Regulation of Entry,” The Quarterly Journal of Economics 117(1) (2002) 1-37, DOI 10.1162/003355302753399436 (bibliographic data checked against Crossref; abstract read in NBER Working Paper 7892, October 4, 2026).

24. Srilata Zaheer, “Overcoming the Liability of Foreignness,” Academy of Management Journal 38(2) (1995) 341-363, DOI 10.5465/256683 (bibliographic data checked against Crossref; abstract read on the publisher's page, October 4, 2026).

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