

FOREIGN BUSINESS RESTRICTIONS

It is important to understand the framework that applies to foreign ownership of businesses in Thailand. The Foreign Business Act is the most important law affecting foreign business ownership. It places restrictions on foreign ownership in business activity. The Board of Investment, the most important government agency to promote investment, has certain powers to grant permission for majority foreign ownership, which would not otherwise be available. Americans have special rights under a treaty called the United States - Thailand Treaty of Amity and Economic Cooperation. There are also special laws that apply to particular industries, including banking and finance, insurance, securities, telecommunications, and shipping. These will be discussed in turn.

The Foreign Business Act 1999, The framework of the Act is to place restrictions on 43 categories of business activity divided into three Schedules: Schedule A, Schedule B and Schedule C.

Framework of the Act The new Act imposes restrictions on 43 categories of business activity divided into three Schedules. For businesses listed in Schedule 1, only minority foreign ownership is permitted and there is no right to apply for majority foreign ownership. For businesses listed in Schedule 2, minority foreign ownership is possible without permission. Up to 60% (with a possibility of applying for up to 75%) foreign ownership is possible with ministerial approval. At least 40% of the directors must be Thai nationals. For businesses listed under Schedule 3, minority foreign ownership is possible without permission. Majority foreign ownership is possible with permission of the Commercial Registration Department and approval of the Alien Business Board. Where permission for majority foreign ownership is granted, other conditions may be imposed under the Act.

Criteria for approval of majority foreign ownership to obtain approval for majority foreign ownership of a Schedule 2 or 3 business, a foreign investor will have to demonstrate that the nature of the business contributes to a number of matters, including: national safety and security; economic and social development, natural resources and energy conservation; environmental protection and consumer protection. Other matters that will be taken into account include: the size of the business; the creation of employment, the transfer of technology, and research and development.

Conditions on licenses Any license granted may include conditions in relation to the following matters: the debt to asset ratio of the business, the number of alien directors to reside in Thailand, the minimum capital levels to be maintained and the period during which such levels should be maintained, requirements concerning technology or property, and other conditions.

Capital requirements The Act and subsequent regulations that have been issued, impose requirements for minimum paid up capital. Foreign shareholders will also have to show evidence that such capital has actually been brought into Thailand.

Certificates If a business is formed under the provisions of the United States - Thailand Treaty of Amity or has promotion privileges granted by the Board of Investment, it is required to apply for a certificate under the Foreign Business Act.

Enforcement The Act sets out various enforcement mechanisms. There is a right of entry into businesses in order to obtain information and documents, which applies against any person. A compliance notice can be issued that can impose a time limit to remedy violations. Nominees and evaders face severe punishment - imprisonment and fines. The Act also provides for fines and imprisonment for breaches of other sections of the Act.

No restriction Where a particular business activity is not restricted under the Foreign Business Act or other special legislation, then foreigners may in general have 100% ownership of such business.

The following are the three Schedules of the Foreign Business Act.

Schedule 1

- (1) Newspaper business, radio broadcasting station or radio/television business.
- (2) Farming, cultivation or horticulture.
- (3) Animal husbandry.
- (4) Forestry and timber conversion from natural forest.
- (5) Fisheries, especially fishery in Thai territorial waters and in specific economic areas of

Thailand

- (6) Extracting Thai herbs.
- (7) Trade and auction sale of Thai antiques or objects of historical value.
- (8) Making or casting Buddha images and alms bowls.
- (9) Trading in land.

Schedule 2

Section I

- (1). Manufacturing, distribution, repair or maintenance of:
 - (a) Firearms, ammunition, gunpowder, and explosive materials,
 - (b) Components of firearms, ammunition, and explosive materials,
 - (c) Armaments, ships, aircraft, or vehicles,
 - (d) equipment or parts of all types of military equipment.
- (2) Domestic land transport, water transport, and air transport; including domestic aviation.

Section 2

- (1) Trading of antiques or artifacts which are Thai works of art or Thai handicrafts.
- (2) Wood carving
- (3) Silkworm rearing, manufacture of Thai silk, Thai silk weaving, or Thai silk printing
- (4) Manufacturing of Thai musical instruments
- (5) Manufacturing of gold-ware, silverware, bronze-ware, or lacquer-ware
- (6) Making bowls or earthenware, which are of Thai art & culture.

Section 3

- (1) Manufacturing of sugarcane from cane.
- (2) Salt farming including rock salt farming
- (3) Mining of rock salt
- (4) Mining including stone quarrying or crushing
- (5) Timber processing for making furniture and utilities.

Schedule 3

- (1) Rice milling and production of flour from rice and plants.
- (2) Fisheries, specifically breeding of aquatic creatures
- (3) Forestry from re-planting.
- (4) Production of plywood, veneer, chipboard or hardboard
- (5) Production of lime.
- (6) Accountancy.
- (7) Legal services
- (8) Architecture
- (9) Engineering.
- (10) Construction, except:
 - (a) Construction of infrastructure in public utilities or communications requiring tools, technology or special expertise in such construction, where the minimum capital paid by aliens is 500 million Baht.
 - (b) other construction, as prescribed in regulations.
- (11) Agency or brokerage, except:
 - (a) Brokerage or agency of securities or service³ related to agricultural commodities futures or financial instruments or securities.
 - (b) Brokerage or agency for the purchase/sale or procurement of goods or services necessary to production or providing services to affiliated enterprises.
 - (c) Brokerage or agency for the purchase or sale, or distribution or procurement of markets, both domestic and overseas, for the distribution of products made in Thailand, or imported from overseas in the category of international business, with minimum foreign capital of no less than 100 million Baht.

- (d) Other brokerage or agency activities, as stipulated in regulations.
- (12) Auctioneering, except
 - (a) Auctioneering by international bidding, not being auctions of antiques, ancient objects or artifacts that are Thai works of art, Thai handicrafts or antique objects, or with Thai historical value.
 - (b) Other type of auctioneering, as stipulated in regulations
- (13) Domestic trade in local agricultural products which is not prohibited by law.
- (14) Retailing, unless not less than 100 million Baht capital is invested or having minimum capital for each shop of not less than 20 million Baht.
- (15) Wholesaling, unless the capital is not less than 100 million Baht.
- (16) Advertising.
- (17) Hotel operation, excluding hotel management
- (18) Tourism.
- (19) Sale of food and beverages.
- (20) Planting and cultivation of plants.
- (21) Other services, except those exempted under ministerial regulations.