

CONTACT

- +662 679 6005
- +662 679 6041
- www.ilct.co.th
- law@ilct.co.th

Foreigners Operating in Restricted Thai Businesses: Legal Implications and Regulatory Framework

Introduction

Thailand's Foreign Business Act B.E. 2542 (1999) (FBA) establishes strict limitations on foreign ownership in designated business sectors in that foreigners are required to have a license prior to the commencement of business in Thailand, in order to safeguard local enterprises. Under the FBA, the restricted businesses are categorized in three (3) Business Lists as attached to the FBA. List One Businesses are absolutely prohibited to foreigners. List Two Businesses may be operated by foreign investors only when they have obtained a permission from the Minister of Commerce, with the approval of the Cabinet. Certain industries under List Three Businesses remain entirely off-limits to foreign investors unless they obtain foreign business licenses under Section 17 of the FBA from the Director General of the Department of Business Development, with the approval of the FBA Committee. Despite these legal restrictions, many foreigners attempt to circumvent the law by utilizing nominee shareholders to be Thai-majority owned company so that they are not subject to the FBA or indirectly controlling businesses. This article outlines the legal parameters of the FBA while analyzing four key sectors where foreign violations are prevalent: retail and small shops, hospitality and lodging, travel services, and wellness businesses.

Hospitality and Lodging

Ownership Regulations

The hospitality sector, including hotels and guesthouses, is heavily regulated under List 3 (17) of the Foreign Business Act (FBA) and tourism laws, which generally require Thai-majority ownership. However, hotels are among the business activities promoted by the Board of Investment (BOI), meaning that foreign-majority ownership is possible if the business is approved by the BOI. Foreigners may also hold management roles without requiring a Foreign Business License (FBL). Additionally, under the Condominium Act, foreign ownership is restricted to a maximum of 49% of the total unit space or saleable floor area within a condominium building, ensuring that Thai nationals retain majority ownership of the remaining units.

Legal Risks and Government Actions

In popular tourist destinations such as Phuket and Pattaya, unauthorized involvement in hotel operations is a recurring issue.

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Many foreigners attempt to control villas and accommodations through nominee shareholders, directly violating Section 36 of the Foreign Business Act (FBA). In addition to these illegal ownership structures, an increasing number of investors—both foreign and Thai—have been found renting out condominium units on a daily basis, effectively operating unlicensed hotels without the necessary Foreign Business License (FBL) (in case of a foreign owner) or hotel permit. This practice violates the Hotel Act, which mandates proper licensing for short-term rentals, as well as condominium regulations that typically prohibit daily rentals to preserve residential integrity and security. These unregulated operations not only bypass taxation and regulatory oversight but also create unfair competition for legally operated hotels and accommodations. When detected, authorities impose severe penalties, including license revocation, asset confiscation, and criminal prosecution. Both foreign and Thai investors engaged in these illegal schemes face business bans, heavy fines, and potential imprisonment, underscoring the significant risks of operating outside the legal framework.

Travel Services and Tour Operators

Legislative Framework

To safeguard the interests of local businesses, the Tourism Business and Guide Act (1992) requires travel agencies to maintain at least 51% Thai ownership, while only Thai nationals are legally allowed to work as tour guides. Additionally, tour operator businesses are completely prohibited for foreigners under this Act. These regulations are designed to ensure that revenue generated from the tourism industry primarily benefits Thai citizens.

Non-compliance with these restrictions can result in severe penalties under Section 37 of the Foreign Business Act (FBA) and the Tourism Business and Guide Act, including fines, suspension of business activities, or even imprisonment, depending on the nature and severity of the violation.

Unlawful Practices and Consequences

Despite these legal safeguards, foreign operators frequently exploit nominee arrangements to establish travel agencies or hire unlicensed foreign tour guides, violating the Tourism Business and Guide Act and work permit laws. Such activities can result in business shutdowns, fines of up to 500,000 baht, and criminal charges. Foreigners found working as tour guides without proper authorization face immediate deportation, blacklisting, and severe legal repercussions, reinforcing the government's

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commitment to preserving employment opportunities for Thai nationals in the tourism sector.

Wellness and Spa Enterprises

Operational Restrictions

Traditional Thai massage and wellness businesses fall under the protection of Thai labor laws, prohibiting foreigners from working as massage therapists. The FBA further restricts foreign ownership in these enterprises since it is regarded as “service business” under List 3 (21) of the FBA. The foreign business license as well as specific licenses are required to be obtained prior to the commencement of business in Thailand, ensuring that these cultural and economic assets remain under Thai control.

Regulatory Crackdowns and Legal Liabilities

Due to the high demand for wellness services, foreign investors often attempt to operate spas and massage centers unlawfully. Government agencies frequently conduct inspections to enforce work permit regulations, leading to mandatory closures, fines of up to 1 million baht, and criminal charges for those found in violation. Additionally, foreign workers employed without legal authorization face immediate deportation and long-term blacklisting, underscoring the strict enforcement of labor and business laws in this sector.

Conclusion

Thailand’s Foreign Business Act and related regulations serve as protective measures to prevent unauthorized foreign control over key industries. Despite these legal constraints, non-compliance remains a widespread issue, leading to significant legal and financial consequences for those involved. Given the government’s reinforced enforcement efforts, foreign investors must fully understand and adhere to local laws. Seeking expert legal counsel before establishing a business in Thailand is essential to ensuring compliance, avoiding penalties, and securing legitimate investment opportunities within the country.

About ILCT Ltd.

ILCT Ltd. is a full-service law firm based in Bangkok, Thailand, with over 50 years of experience providing comprehensive legal solutions to domestic and international clients. Our firm offers expertise across a wide spectrum of legal fields, including corporate and commercial law, mergers and acquisitions, intellectual property, dispute resolution, taxation, regulatory compliance, and foreign investment.

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