

CHAPTER

1

Definition of “Foreigner” under the FBA

Over decades, Thailand has performed relatively well in establishing itself as one of the major destinations in the region for foreign direct investment. Multinational companies cannot afford to stay away from Thailand given the country offers many attractive reasons to invest; among them are its strategic location, excellent infrastructure (it was started in the early 1980s with relatively good roads that the Americans built during the Vietnam war and could not remove when the war ended), relatively cheap labor, and various government incentives. With the Plaza Accord initiated by the Reagan Administration in mid 1980s, the Japanese manufacturers had no choice but to relocate their manufacturing hubs outside Japan and they moved to Thailand in a big scale. While the Thai government encourages foreign direct investment as a mean to spur the economic growth, to create employment and to allow technology transfer, at the same time, it has to remain cautiously optimistic about the impact on the local businesses. Without certain degree of control, Thailand will experience a huge flow of foreign direct investment that can leave the local businesses exposed and vulnerable to the fierce foreign competition.

Essentially, Thailand enacted a foreign business law (also known as alien business law) called the Foreign Business Act, B.E. 2542 (1999) (the “FBA”) as a legal mechanism to protect the local owned businesses from the foreign competition. A regulator under the FBA is Foreign Business Administration Division, the Department of Business Development, Ministry of Commerce. The FBA regulates investment activities in Thailand through its restrictions imposed on foreigners when doing business in Thailand.

What's more, other pieces of legislation also exist to regulate foreign owned businesses in particular industries. Foreigners planning to invest in Thailand are advised to check whether a restriction on foreign ownership applies under any particular legislation or not.

Who are “Foreigners” under the FBA?

In the spirit of protectionism for local businesses, the FBA sets restrictions that are largely applicable to the below:

- (i) a foreign individual;
- (ii) a foreign company; and
- (iii) a foreign owned company incorporated in Thailand, as described by the FBA.

To get a better idea on the definition of a foreign owned company, read NARIT's Glossary on *Foreign Owned Company under FBA* on the next page.

As the FBA does not apply to local companies, rather regulates heavily on the foreign owned companies, logically the FBA has to make a clear distinction between the two so that a good definition can be well understood. Thus, to establish the eligibility for investing in the restricted activities, the FBA sets out the following criteria to be considered as a “foreigner”.

1. An individual without Thai citizenship.
This means an individual with dual citizenship is deemed a Thai for the FBA purpose.
2. A juristic person registered under the law of a foreign country, i.e. a company incorporated outside Thailand.
3. A juristic person registered in Thailand with the following element:
 - (a) having at least 50% of capital held by (1) or (2), or having at least 50% of investment placed by (1) or (2).
 - (b) being a limited partnership or a registered ordinary partnership with a foreign managing partner or a foreign manager.
4. A juristic person registered in Thailand with at least 50% of the capital held by (1), (2) or (3).