Tackling Nominee Businesses and Ensuring Compliance in Thailand

Following an extensive investigation by the Department of Business Development (DBD) into businesses using Thai nominee structures in key sectors such as tourism, real estate, hospitality, and logistics, the DBD plans to inspect an additional 26,830 businesses in 2025. This expanded scrutiny will now include e-commerce and warehousing sectors.

To identify nominee structures where foreign nationals use Thai nominees to circumvent the ownership restrictions under Thai laws, particularly the Foreign Business Act and the Land Code, the DBD is developing an Intelligence Business Analytic System (IBAS). This system will analyze the names of individuals flagged by other organizations or those with investments in multiple businesses, comparing their investments with their financial capabilities.

The DBD is collaborating with the Royal Thai Police to tackle nominee businesses and mule accounts often used for illegal activities. The key actions include data sharing, joint inspections, and utilizing the IBAS to identify and analyze high-risk entities.

A Sub-Committee for the Prevention and Suppression of Nominee Businesses has been established, comprising of representatives from various government agencies, such as the DBD, Immigration Office, Employment Department, Land Department, Revenue Department, and Anti-Money Laundering Office. This committee will focus on achieving concrete results in three phases:

1. **Short-term (within 3 months)**: Sharing information, conducting joint fieldwork, and holding press conferences to alert the public about nominee-related crimes.

2. **Medium-term (within 12 months)**: Developing an electronic system to link data across agencies, facilitating faster work by officials and enforcing strict legal action against offenders.

3. **Long-term (over 1 year)**: Updating and clarifying laws concerning violations related to foreign business operations under Anti-Money Laundering Office (AMLO) regulations.

These plans aim to effectively address nominee structures, ensuring public and investor confidence by safeguarding legitimate business practices and preventing fraud. A complaint center for nominee-related issues will be established for better resolution. The Ministry of Commerce will continue to monitor and collaborate with relevant agencies to ensure the success of these initiatives.

Businesses are encouraged to perform due diligence and ensure compliance with Thailand's laws. Companies that fail to comply risk legal penalties and reputational damage, which can affect their long-term operations in Thailand, including potential block listing.

BDO Insights

Nominee structures often raise red flags with government authorities as they can be used to circumvent foreign ownership restrictions and create a facade of compliance. Nominee structure is being used to disguise the true ownership of companies set up in Thailand by foreign investors, and therefore, violates the FBA and other related special laws. Governments are tightening regulations surrounding nominee structures to prevent money laundering, tax evasion, and other illicit activities.

A nominee refers to a Thai individual or entity acting as a front or proxy for a foreign investor to hold assets, including shares or land, on their behalf. This practice, used to circumvent ownership restrictions, is illegal under various Thai laws. Under the Foreign Business Act B.E. 2542 (FBA), using nominee structures for business or land ownership can lead to criminal charges for both the Thai nominee and the foreign investor. Penalties include fines ranging from 100,000 to 1,000,000 THB, additional daily fines of 10,000 to 50,000 THB until the violation is rectified, imprisonment of up to three years, or both, and forced closure of the business. The Land Code also prohibits using nominees to bypass foreign ownership restrictions on land, with penalties of up to two years imprisonment, a fine of 20,000 THB, or both.

Nominee structures can lead to significant business risks, legal action, reputational damage, and tax evasion. One major issue is the lack of transparency, as nominees can obscure the identity of business owners, making it difficult for authorities to trace the flow of funds. This lack of clarity is particularly problematic in international trade, where cross-border transactions and investments need thorough vetting. The opacity created by nominee arrangements can undermine government efforts to enforce anti-money laundering regulations and other compliance measures.

Nominee arrangements often result in disputes, especially when it comes to decision-making, profit-sharing, or exit strategies. These disputes can be lengthy and expensive to resolve, leading to operational disruptions that hurt business performance and reputation.

Cross-shareholding, where companies hold shares in each other to increase control, can complicate matters when increasing capital. This arrangement creates a complex web of ownership and decision-making, making it difficult for potential investors or lenders to evaluate a company's financial health. In the context of nominee structures, cross-shareholding can amplify these risks, making it harder for a business to secure external funding or engage in strategic partnerships. While legal, cross-shareholding can create operational challenges and reduce stock liquidity, limiting a company's ability to attract new investment or issue shares to raise capital. It can also obscure true power dynamics within the company, creating conflicts between shareholders and complicating critical business decisions.

Do the Right Thing

Foreign investors can legally do business in Thailand without using Thai nominees by considering the following alternatives:

1. **Board of Investment Thailand (BOI)**: Certain eligible business activities are promoted by the Board of Investment (BOI). The BOI grants investment incentives and permits foreign ownership up to 100% in promoted business categories, fostering compliance and long-term benefits.
2. **Foreign Business License (FBL)**: Allows foreign ownership in restricted sectors by meeting specific criteria under the FBA. It is a tedious process, but it is worth the resources and time in making sure that subsidiaries or branches of foreign companies are legally doing business in Thailand.
3. **Treaty of Amity (TOA)**: A treaty between Thailand and the United States allowing U.S. companies or individuals to own and operate businesses in Thailand, engaging in most sectors without adhering to FBA restrictions.
4. **Industrial Estate Authority of Thailand (IEAT)**: Offers benefits for companies establishing manufacturing operations in industrial estates.

These alternatives ensure compliance with Thai law, protect ownership, and support business sustainability without the legal risks associated with nominee structures.