

## Legal Alert 法务快讯

### Risk of Nominee Shareholding Structure in Thailand

#### 泰国代持股风险

In Thailand, foreign individual or legal entity shall obtain a foreign business license ("FBL") in accordance with the Foreign Business Act ("FBA"), or meet minimum capital requirement to by-pass the FBA requirements, or being an American under the Treaty of Amity, or obtain a Board of Investment approval to be majority foreign owned business to operate in services and trading business. Otherwise, the business must be majority Thai owned.

泰国主要用以监管外商投资的主要法律为《外商经营企业法》（“外商法”），根据此法外国自然人或法人必须获得“外商营业执照”才能经营外商法规定的某些受限行业，比如服务业及贸易业务。除非能够满足最低投资资本要求那么可以免受外商法的管辖；或者股东为美国籍自然人或法人，那么根据泰国与美国友好协议，美籍股东可以持有全部股份在泰国开展商业活动；或者获得泰国投资促进委员会颁发的投资优惠证书，那么外商可以同样免受外商法管辖。不然，在外商法规定的受限行业中必须由泰国人持有多数股权的公司经营。

In practice, some foreign investors try to operate business in Thailand by using nominee shareholding structure to by-pass the licensing procedure or other laws prohibiting specific business categories for foreigners. Under a nominee shareholding structure, even though on paper it is a company majority Thai-owned, in substance, foreign shareholders effectively control the company.

然而很多外国投资者通常选择由泰国人代其持有所有权的办法以规避外商营业执照申请、或某些特定行业对外资持股的限制，从而使得外国投资者得以在泰国开展任何业务。在此代持股安排下，这些公司是由泰国人持有多数股权，成为名义上的泰国公司，但公司实质上为外商所控制。

The use of Thais as nominee shareholders by foreigners to circumvent the FBA is illegal in Thailand.

值得注意的是外国投资者利用泰国人代持股来规避外商法在泰国属于违法行为。

Recently, according to Bangkok Post, two Thais and one Chinese national have been arrested for allegedly serving as nominees for a Chinese-owned tour firm accused of cheating businesses on Koh Samui out of 3 million baht. Ten tourist businesses operating on Koh Samui on July 23 complained to the police on the island, that a Chinese firm, Romantic Samui Co, had refused to pay bills totaling more than 3 million baht after using their services. An investigation found that the Chinese firm was owned by a Chinese women, and the two Thais earlier were employees of Romantic Samui. Bophut police investigators have charged the three suspects with being hired nominees of Romantic Samui Co. A court arrest warrant had been issued for the owner, the Chinese woman.

近期《曼谷邮报》报道了一则关于代持股人被捕新闻：一家在苏梅岛经营的中国旅游公司被举报涉嫌欺诈300万泰铢后，该中国公司的两名泰国人和一名中国公民则因代持股而被捕。7月23日在苏梅岛经营的10家旅游公司向岛上的警方举报，一家名为“浪漫苏梅岛”的中国旅游公司在使用他们的服务后拒绝支付总额超过300万泰铢的账单。经过警方调查发现，该中国旅游公司实际是由一名中国女性持有，而此两位泰国股东则是该公司的员工。警方对这三名嫌疑人提出作为代持股人的指控，并已经向公司实际持有人该名中国女性发出了法庭逮捕令。

This is the first case caught by the authority using of Thai nationals as nominees to run a tour business in Thailand. In fact, such nominee shareholding structure have been applied by lots of Chinese investors in other business as well. According to Section 38 of Foreign Business Act, both the foreigner and Thai nominee shareholders will be liable for a fine up to 1 million Baht, and / or imprisonment of up to three years. It is suggested that Chinese investors to seek for local professional advice before set up any business in Thailand.

这是利用泰国公民作为代持人在泰国经营旅游业被警方指控的第一起案件。事实上，很多中国投资者利用代持股结构在泰国开展其他受限业务。根据外商法第 38 条，以代持人形式规避法律的，外国人和泰国人将被处以三年以下监禁或处以最高 100 万泰铢的罚款，或两者并处。我们建议中国投资者在泰国开展业务前寻求当地的专业法律意见以规避风险。

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