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Quo Vadis, Thailand?

The Amendment of the Foreign Business Act

By *Andreas Richter (Bangkok)*

After the military coup d'état in September 2006 as well as new, restrictive foreign currency controls by the central bank, a draft amendment of the Foreign Business Act further unsettles foreign investors. Already there are voices cautioning that foreign investment is no longer welcome in Thailand. But the question that needs to be addressed is what is really new about the projected amendment?

On January 9th, 2007, the Royal Thai Cabinet under Prime Minister Surayud passed a draft amendment to the Foreign Business Act. Currently the draft has not yet been approved by the competent governmental bodies and parliamentary readings, and accordingly the draft is not yet effective.

The principle idea of the amendment is an extended definition of the term “foreign companies”. Generally, foreign companies, or foreigners, are in various aspects restricted in their business operations in Thailand. According to the current legislation, companies registered in Thailand are deemed foreign companies if 50 percent or more of their paid-up capital are owned by foreign shareholders. According to the draft amendment to the Foreign Business Act, companies registered in Thailand will be considered as foreign companies if they have foreign voting rights of more than 50 percent, even if the foreign share is less than 50 percent of the total share capital of the company. Currently, structuring a Thai company so that minority shareholders eventually control the company via majority voting rights is a common practice for companies with foreign minority shareholding that do not qualify for exemptions from the restrictions of the Foreign Business Act.

If the draft amendments are made effective, companies that would be affected are those whose business activities are listed in the so-called Annexes 1 and 2 of the Foreign Business Act. These are basically TV stations and print media, agro-businesses as well as business areas which concern national security. The vast majority of business activities relevant for foreign companies are however not affected by the planned revision as they are either listed in Annex 3 of the Foreign Business Act or, like e.g. manufacturing, not subject to restriction by the Foreign Business Act.

Considering the fact that the majority of foreign companies in Thailand are exempted from the restrictions of the Foreign Business Act - operating as a 100 percent foreign owned subsidiary in Thailand with either a foreign business license, or promotion by the Thai Board of



Investment - the impact of the draft amendments to the Foreign Business Act on foreign business operations is marginal.

Traditionally, Thailand provides a business friendly environment that has always depended on foreign direct investments for its economic development. The growth and the economic drive of the last decades were predominantly based on foreign capital and investments that have been intensely promoted by the Thai Government. Restrictive laws, enacted for the contentment of conservative circles, are being softened or neutralized by a liberal administrative practice. In so far as the promotion of foreign companies by the Thailand Board of Investment rather than the norm than the exception, and the same applies for the issuance of a Foreign Business License.

In this respect there is no reason to assume that the current government would want to turn back the clock. Rather, it appears, that the interim government of hand-picked technocrats installed by the military is of a certain political and economic naivety and not always aware of the impact and the consequences of its decisions and how they are perceived.

According to recent opinion polls, the Thai public also questions the political abilities of the Surayud government. The initial euphoria after the military coup, in particular by the middle class, has vanished, with the general population eagerly awaiting new elections scheduled for the end of the year.

For the majority of foreign companies operating in Thailand there will be no change as a result of the planned amendment to the Foreign Business Act. "Business as usual" is the motto, and even the Thai stock exchange is currently recovering from its slump of the last weeks.