Legal Update: Further DBD's Measures Against Nominee Arrangements

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OAL Thailand Office

As we reported in our newsletter of April 2026, the Department of Business Development, Ministry of Commerce (the "DBD") has been taking measures to prevent the use of Thai limited companies as part of a nominee scheme to enable unlawful business operations by foreign investors. The DBD recently reported that some companies were exploiting a gap in the former rules: they would structure the company to pass the review at the incorporation stage and later register an amendment to bring a foreign authorized director into the company, without any means of verifying whether the underlying Thai shareholding was genuine. To mitigate this gap, a new Central Partnership and Company Registration Office Order No. 2/2569 ("Order No. 2/2569") has been issued to make the review and prevention of nominee schemes more effective.

1. New Evidence and Reporting Requirements

Starting from 1st August 2026, a company limited registration will require more declarations and evidence as follows:

1.1 Verification Upon Incorporation

Where a company is incorporated with mixed Thai and foreign shareholders in a structure where foreign shareholders hold less than 50% of the shares, or where the company is wholly Thai-owned but has a foreign authorized director — the same scope previously covered by the now-repealed Order No. 2/2568 — the director submitting the application must submit the following documents:

1. A 3-month bank statement — counting from the date of capital payment — of the Thai shareholder showing the transfer or withdrawal of money equal to the amount of their intended capital contribution;
2. A bank statement of the director who received the share payment, showing the dates on which payment was received from all shareholders (regardless of nationality); and
3. A "Statement of Investment upon Incorporation" annexed to Order No. 2/2569 — setting out the details of each shareholder's capital injection.

In case that the director who received the share payment is also a shareholder of the company, the bank statement in item 2. must cover 3-month period from the date of his capital payment as well.

1.2 Verification Upon Amendment of Authorized Directors

Where a company files an application to amend its authorized directors from 100% Thai nationals to include a foreign authorized director — the same scenario previously covered by Order No. 1/2569 — the company must continue to submit the Declaration of Genuine Investment, certifying that there is no use of a nominee scheme.

However, if the company filed for its incorporation on or after 1st August 2026 and then files the application for such amendment within 1 year of its incorporation, it must also submit a bank statement of the company

— or of the director, if the company has not yet been able to open a company bank account — evidencing that the company has received capital payment as declared to the DBD, together with a "Statement of Investment upon a Corporate Amendment" annexed to Order No. 2/2569.

2. Liability for Providing False Information

Order No. 2/2569 does not create any new offence, but if the director submitting the application form knows that a particular Thai shareholder has not made a genuine investment, or that a nominee scheme is being used in the operation of the company, and nevertheless submits a false statement to the DBD, that director may still be liable under Sections 137 and 267 of the Criminal Code for giving a false statement to a public official (imprisonment of up to 6 months, a fine of up to 10,000 THB, or both), and for causing a public official to record false information in an official document (imprisonment of up to 3 years, a fine of up to 60,000 THB, or both).

Additionally, the DBD has emphasized that where a nominee scheme is used to avoid the licensing requirements under the Foreign Business Act, a Thai national who assists a foreign investor in implementing the nominee scheme may be liable under Section 36 of the Foreign Business Act B.E. 2542, which provides for imprisonment of up to 3 years, a fine of 100,000 THB to 1,000,000 THB, or both. The company concerned may also be ordered to cease its business operations under Section 37 of the same Act.

3. Impact on Businesses and Recommendations

Because Order No. 2/2569 broadens the scope of review, and requires verification of the capital injection from both directors and shareholders — both at the time of incorporation and within 1 year following incorporation — businesses should consider and prepare for the following:

- A foreigner who plans to set up a company jointly with Thai investors must ensure, before the application for company incorporation is filed, that the Thai investors have the capacity to pay their capital contributions.

- Both the Thai shareholder and the director receiving the share payment must be able to prepare bank statements evidencing the payment and receipt of the funds, respectively.

- Although Order No. 2/2569 does not apply where a company already has a mix of Thai and foreign authorized directors and simply wishes to change its foreign authorized director, this exemption does not persist automatically over time. If the company at any point removes all its foreign authorized directors — leaving only Thai authorized directors — and later reappoints a foreign authorized director, the Declaration of Genuine Investment will be required at that time.

- A company that was newly incorporated on or after 1st August 2026 and plans to change its authorized directors from 100% Thai to include a foreign authorized director, must ensure that it has a bank statement showing capital payment that is consistent with the paid-up capital reported to the DBD.

- All directors who submit the application form, whether upon incorporation or upon the amendment of directors described in items 2 and 3 above, must ensure that the investment of every shareholder is genuine and that no nominee scheme is being used (as the case may be).

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