

## Legal Update: Strengthening the DBD's Measures Against Nominee Arrangements

16<sup>th</sup> April 2026  
OAL Thailand Office

Recently, the Department of Business Development under the Ministry of Commerce (the “DBD”) has further intensified its enforcement of the Foreign Business Act (the “FBA”) with a view to tackling so-called nominee schemes, under which Thai shareholders lend their names to hold shares on behalf of foreign investors. The primary focus of this initiative is to verify whether Thai shareholders have actually contributed capital from their own funds, and to ensure that each Thai shareholder has genuinely paid up the share capital personally and is not acting merely as a nominee.

Traditionally, under Central Partnership and Company Registration Office Order No. 205/2555 (the “Former Order”), Thai shareholders were only required to submit bank balance certificates evidencing their financial capacity. However, the review was effectively limited to checking whether the account balance exceeded the investment amount, and there was no mechanism to verify whether the capital contribution had in fact been made, which was regarded as insufficient to eliminate nominee schemes.

To remedy this, the DBD has issued Order No. 2/2568 in 2025 (“Order No. 2/2568”), which aims to make actual fund flows verifiable, and Order No. 1/2569 in 2026 (“Order No. 1/2569”), which requires limited companies to certify that they do not employ nominee schemes and that Thai shareholders have made genuine investments. In this article, these two orders are collectively referred to as the “New Orders.”



### 1. Key Changes: Main New Rules under the New Orders

#### 1.1 Obligation to Submit Bank Transaction Statements

The Former Order and Order No. 2/2568 apply to partnerships and limited companies that fall under any of the following categories:

- Where the shareholding of foreign shareholders is less than 50% of the registered capital; or
- Where there are no foreign shareholders, but a foreigner serves as a director with signing authority.

Under the Former Order, Thai shareholders were required, at the time of incorporation, to obtain and submit a bank balance certificate from their bank showing an account balance at least equal to the amount of their intended capital contribution in order to demonstrate their financial capacity.

Order No. 2/2568, however, obliges all Thai shareholders, regardless of the amount of their capital contribution, to submit bank transaction statements covering the three-month period preceding the date of payment of the share capital. Based on these bank transaction statements, the DBD will verify that the contribution amount has been transferred from the Thai shareholder’s bank account to the company (or to its director), and that the source of funds is not financing provided by foreign shareholders or their related parties. In doing so, the DBD will also review the consistency of the transfer amounts and dates with information in other corporate filing documents, and if discrepancies are identified, the registration may be rejected.

In this way, Order No. 2/2568 shifts the focus of review from mere “payment capacity” to the “actual making of the capital contribution,” thereby making the use of nominee schemes significantly more difficult.

#### 1.2 Obligation to Submit a Declaration of Genuine Investment

When a limited company, in which only Thai directors with signing authority are currently registered, seeks to newly register a foreign director with signing authority, Order No. 1/2569 requires the director responsible for the filing (i.e., the director who signs the registration documents) to submit a “Declaration

of Genuine Investment.” In this declaration, it must be affirmed that all Thai shareholders of the company have actually made their capital contributions from their own funds and are not nominee shareholders. If a false declaration is made, the director with signing authority who signed such declaration may, as discussed below, be held liable.

## **2. Impact on Companies and Recommended Actions**

Although the New Orders themselves do not prescribe any direct penalty provisions, a company will not be able to proceed with the registration of a new company or the registration of a foreign director with signing authority if it fails to submit the required bank transaction statements or declarations. Furthermore, if a director submits a declaration stating that there are no nominee shareholders while being aware that the company’s Thai shareholders are in fact nominees, such conduct may be treated as a false declaration. In that case, the director who made the declaration may be exposed to criminal liability under Sections 137 (false statements to a public official) and 267 (causing a public official to record false information in an official document) of the Criminal Code, and may be subject to imprisonment for up to three years, a fine of up to THB 60,000, or both.

In light of the above, it is important, at the time of incorporation, to ensure that the Thai shareholders have completed payment of their capital contributions before the application for company registration is filed. If a foreign director with signing authority is registered from the outset, submission of a declaration will not be required at that stage; however, if such foreign director later resigns and, as a result of a change of directors, only Thai directors with signing authority remain, a new declaration will again be required when another foreign director with signing authority is subsequently registered. It is therefore advisable to carefully plan both the timing of director changes and the composition of directors when making changes to the board.

## **3. Conclusion**




New Orders represent significant regulatory enhancements aimed at increasing transparency and reliability in Thailand’s company registration system and mark an important turning point in registration practice by tightening the scrutiny of ultimate beneficial ownership in order to prevent nominee schemes. As a practical matter, companies are expected to minimize the risk of delays or rejection of registration applications by carefully planning the timing of capital contributions, monitoring the flow of funds, and preparing adequate supporting documentation in advance. In addition, since the timing of director changes involving the appointment or resignation of foreign directors with signing authority may trigger the obligation to submit a declaration, it is crucial to consider the schedule for changes in board composition well ahead of time.

Should you have any questions or require further clarification regarding company registration procedures, address amendments, or compliance planning, please do not hesitate to contact One Asia Lawyers (Thailand Office), where our team will be pleased to assist you.

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