

IF NOMINEE SHAREHOLDING IS NOT A STRUCTURE, WHAT ARE THE SOLUTIONS?

Thailand continues to be one of the key destinations for foreign investment in Southeast Asia, particularly in manufacturing, technology, infrastructure, digital services and other high-value industries. However, foreign investors considering an investment in Thailand are often faced with the same question: "*Can a foreign investor own 100% of the shares?*"

Under the Foreign Business Act B.E. 2542 (1999) (the "**FBA**"), there is no standard rule that foreign investors may only hold 49% of the shares in every Thai company. At the same time, 100% foreign ownership is not available for every business. The key consideration is the **actual business activity** to be carried on in Thailand and whether such activity is restricted under the FBA or other applicable laws.

Accordingly, proper legal structuring should begin with the business itself rather than simply determining the percentage of foreign and Thai shareholding.

This article highlights the key legal and practical considerations that foreign investors should be aware of when structuring an investment in Thailand, including Foreign Business Licence ("**FBL**"), Board of Investment ("**BOI**"), Eastern Economic Corridor ("**EEC**"), Industrial Estate Authority of Thailand ("**IEAT**"), and joint venture structures.

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Why Legal Structuring Is Important

Before establishing a company in Thailand, foreign investors should first identify precisely what the proposed company will do and, in particular, which activities will generate revenue.

The analysis should not be based only on the general description of the project. A single project may involve several different activities, and each activity may be subject to different legal requirements. For example, a foreign-invested company may be permitted to carry on a manufacturing activity without an FBL, while its separate service, retail or wholesale activities may still require further consideration under the FBA.

Similarly, obtaining BOI promotion for one activity does not necessarily permit the company to carry on other non-promoted activities without considering whether separate permission is required.

For this reason, foreign investment structuring should generally consider the following questions at an early stage.

1. What exactly will generate revenue?
2. Is each activity restricted?
3. Does an FBL express exception apply?
4. Can BOI, IEAT or EEC support the project?
5. If permission is needed, FBC or FBL?
6. If a JV is chosen, is it genuine?

How the Foreign Business Act Applies

Under the FBA, a foreign investor must first determine whether the proposed business falls within any of the restricted business categories.

The FBA contains three lists of restricted businesses.

List 1 covers businesses reserved for Thai nationals. Foreigners are not permitted to carry on these activities under the FBA.

List 2 covers businesses relating to national safety or security, arts, culture, traditions, customs,handicrafts, natural resources and the environment.

List 3 covers businesses in which Thai nationals are considered not yet ready to compete with foreigners.

In practice, the foreign investors may apply FBL for those businesses falling under List 3.

On the other hand, activities that do not fall within the restricted lists generally do not require permission under the FBA. These may include manufacturing activities, export businesses and other activities falling outside the restricted categories, subject to the particular nature of the business and other applicable laws.

When an FBL May Not Be Required

Before proceeding with an FBL application, foreign investors should consider whether the proposed business is outside the restricted lists or falls within an applicable exemption or exception.

Examples may include:

- ✅ Manufacturing and export businesses
- ✅ Retail: THB 100m total capital, or THB 20m per store
- ✅ Wholesale: THB 100m per store
- ✅ Non-income-generating entities (representative/regional offices)
- ✅ Express statutory exceptions (e.g government-contracted services)

Where none of the available exceptions apply and an FBL is required, investors should first identify the exact restricted activity and may consider pre-consultation with the relevant DBD officer before proceeding with the application

1. Identify the business activity precisely
2. Pre-consult with the relevant DBD office
3. Establish the appropriate legal entity
4. Prepare and submit the FBL application

It is also important to note that an FBL only permits the company to carry on the approved restricted business. It does **not** itself confer land ownership rights or provide the tax and non-tax incentives available under investment promotion regimes

Nominee Shareholding Is Not a Structuring Solution

Where an activity is restricted, the use of Thai nominee shareholders is **NOT** a lawful alternative to obtaining the appropriate permission.

Section 36 of the FBA addresses conduct involving Thai nationals or juristic persons who assist foreigners in carrying on restricted businesses in circumvention or violation of the FBA. Such conduct may include, among others, holding shares on behalf of a foreigner, appearing as the owner of a business operated for a foreigner, aiding or abetting prohibited conduct, or otherwise participating in an arrangement intended to circumvent the FBA.

It is important to distinguish a nominee arrangement from a genuine joint venture. Thai investors may legitimately invest and participate in a business together with foreign investors. The concern arises where the Thai shareholder does not make a genuine investment or does not exercise genuine rights as a shareholder, but merely holds shares on behalf of the foreign investor.

In practice, nominee shareholding continues to be an area of close regulatory attention. The Department of Business Development (so-called "**DBD**") has identified several measures to prevent and suppress nominee arrangements, including verification of the financial status of Thai investors, monitoring high-risk entities and business groups, cooperation with other government agencies and continued development of relevant laws and regulations.

1. Verify the financial status of Thai investors before juristic person registration.
2. Identify nominee-risk entities and high-risk business groups for closer monitoring.
3. Work together with relevant government agencies.
4. Update laws and regulatory measures relating to nominee arrangements.

BOI, EEC and IEAT

Where a business is restricted under the FBA, an FBL may not necessarily be the only available structure. Depending on the business activity and location, foreign investors may consider BOI promotion, EEC incentives or IEAT permission.

BOI PROMOTION	EEC	IEAT
Eligible activity → promoted project → foreign ownership permission → FBC for the promoted scope.	Geographic route across Chachoengsao, Chonburi and Rayong, across five target industry clusters.	Industrial estate location → IEAT permission → FBC under Section 12, limited to the permitted scope.

Board of Investment

BOI promotion is one of the principal routes commonly considered by foreign investors where the proposed business falls within an eligible promoted activity.

In general, an eligible activity may be approved as a promoted project. The relevant promotion may then provide the foreign ownership basis for the project and support an FBC for the restricted promoted scope.

The BOI currently considers investment promotion projects through four Investment Promotion Divisions.

Division 1

Agricultural, food, biotechnology and medical industries

Division 2

Advanced manufacturing industries

Division 3

Basic and supporting industries

Division 4

Digital, creative industries and high-value services

In addition to the foreign ownership structure, BOI-promoted projects may be entitled to tax and non-tax incentives, depending on the category and conditions of the promotion.

BOI INCENTIVES

Tax Incentives

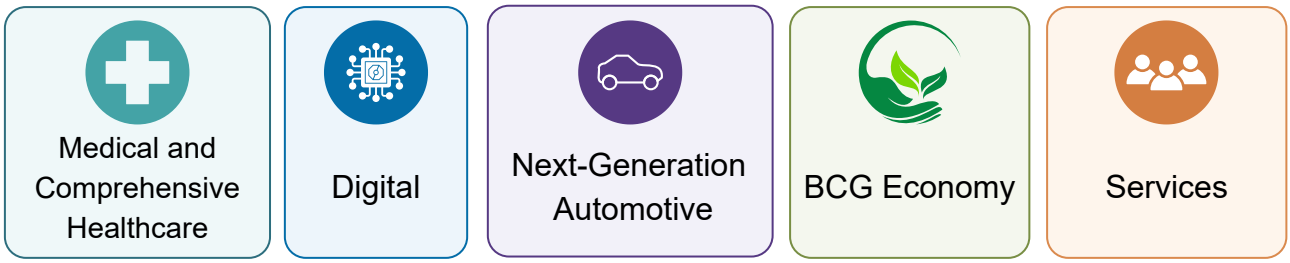
- Import duty exemption/reduction on machinery
- Import duty reduction on raw or essential materials
- Import duty exemption on R&D materials
- CIT exemption on net profit& dividends
- 50% CIT reduction
- Double deduction on transport/utilities
- 25% additional deduction, facility costs
- Import duty exemption, export production materials

Non-Tax Incentives

- Entry permit to study investment opportunities
- Permit to bring in skilled workers/experts
- Permit to own land
- Permit to remit money abroad in foreign currency

Eastern Economic Corridor

The EEC covers Chachoengsao, Chonburi and Rayong and has been established as a strategic investment area for targeted industries.



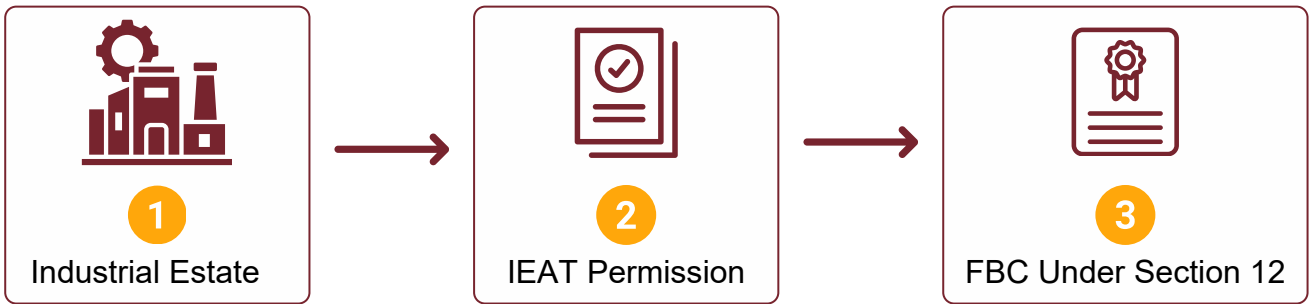
Depending on the nature of the project, its location and the applicable approval criteria, additional tax and non-tax incentives may be available under the EEC framework.

These may include, among others, land ownership rights within Special Economic Promotion Zones, condominium ownership rights and immigration or work-permit facilitation.

However, being located within the EEC does not automatically entitle every business to the maximum EEC incentives. The eligibility of the particular project and conditions attached to the relevant approval must still be considered

Industrial Estate Authority of Thailand

An additional route may be available where the company operates within an industrial estate under the IEAT framework. In general, the structure may involve obtaining IEAT permission for the relevant business and subsequently obtaining an FBC under Section 12 of the FBA for the permitted scope.



One Project May Require More Than One Framework

A single investment project may involve several regulatory frameworks, including the FBA, BOI, EEC and IEAT regimes, at the same time. Investors should therefore consider each approval separately and understand the specific rights and permissions granted under each framework.

Getting the Joint Venture Right

Where the desired structure cannot be achieved through an exemption, FBL, BOI, EEC or IEAT route, foreign investors may consider establishing a genuine joint venture with a Thai partner.

However, the Thai partner should be a genuine investor and not merely a shareholder introduced to satisfy a particular ownership percentage.

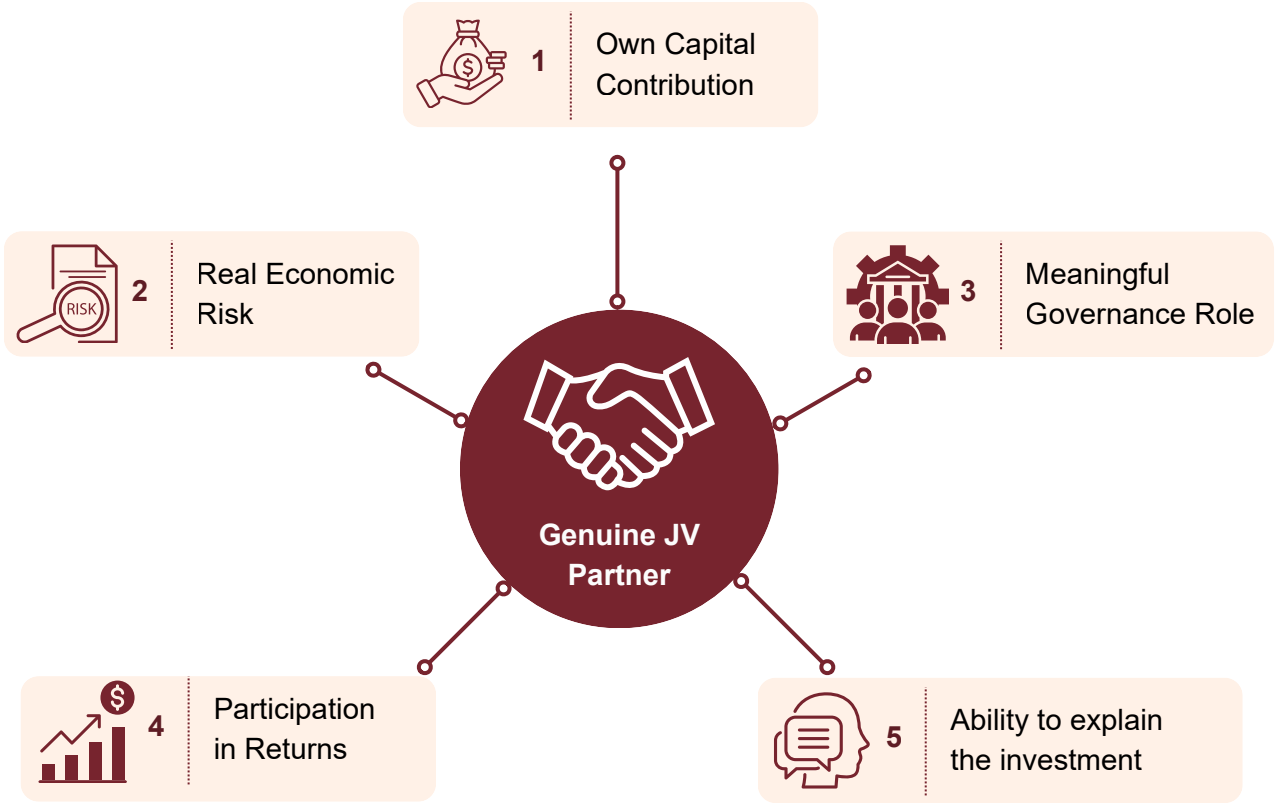
In practice, the substance of the Thai partner's participation is important.

A genuine JV partner is **not** merely a shareholder introduced to satisfy the 51% Thai ownership requirement.

A genuine JV partner must demonstrate **real economic participation**, **business contribution** and **involvement in the management** of the company

How do we determine whether the Thai partner is genuine?

Consider the following **five key factors.**



Where these elements exist, the parties should then ensure that their commercial relationship is properly reflected in the Joint Venture Agreement ("**JVA**").

General Terms and Conditions of the JVA

The parties should ensure that the key terms and conditions between the joint venture parties properly reflected in the Joint Venture Agreement, including:

1. Capitalisation
Each party's capital contribution — what, and when.

2. Board
Board seats, appointment and removal rights.

3. Quorum
Minimum attendance required for valid board decisions.

4. Reserved matters
Decisions requiring approval from both parties.

5. Funding
Future funding needs — equity, shareholder loans, or dilution.

6. Deadlock
Mechanism to resolve disputes — escalation, mediation, or exit.

7. Transfers
Restrictions on when and how shares can be sold or transferred.

A genuine JV structure is demonstrated not only by actual participation in the business, but also by a well-structured JVA that reflects the true commercial relationship between the parties.

Final Thought

As set out above, Thailand offers several legitimate legal pathways, including activities outside the restricted lists, FBLs, BOI promotion, EEC incentives, IEAT permission, and genuine joint ventures, for structuring a company with majority or full foreign ownership, without resorting to nominee arrangements. The right structure depends on the actual business activity, source of revenue, proposed location, and available approvals. Foreign investors should assess these factors at an early stage, rather than defaulting to an assumed 49:51 shareholding split.

For further guidance on structuring your investment in Thailand, please contact:

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