

Principle and Reasons

Foreign Business Bill

(No.....)

BE.....

Principle

To amend the Foreign Business Act B.E. 2542 (1999) as follows:

(1) To amend the definition of “Foreigner” as follows. In case of a juristic person registered in Thailand, it shall include a foreigner having half or more of the total voting rights of such juristic person (To amend Section 4 of the Foreign Business Act B.E. 2542);

(2) To amend Sections 35, 36 and 37 by imposing higher fines and daily fines. In case where a juristic person commits an offence, a director, partner or authorised person of such juristic person shall also be punished for such offence as prescribed by law (To amend Section 41 of the Foreign Business Act B.E. 2542);

(3) To prescribe a provisional clause to give assistance to all persons affected from the amendment of the definition “Foreigner” (To be stated in Section 8 of the Bill);

(4) To prescribe a provisional clause to enable a person affected from the amendment of the punishment to have sufficient times to comply with the Act (To be stated in Section 9 of the Bill);

(5) To improve List 3 attached to the Foreign Business Act B.E. 2542 by revocation of Clause (18), amendment of Clauses (13), (14), (15) and (21) (To be stated in Sections 10 and 11 of the Bill).

Reasons

Whereas some foreigners are currently operating some reserved businesses specified in the Foreign Business Act B.E. 2542 (1999) by issuing and offering preferred stocks to the foreigners who do not invest/hold more than half of the total registered capital but have half or more of the total voting rights in those reserved businesses with an objective to avoid the law; whereas the punishments imposed on such foreigners are quite low; whereas the businesses stipulated in List 3 attached to the Foreign Business Act B.E. 2542 (1999) are already under control by specific laws and whereas it is necessary to amend the definition of “Foreigner” to cover voting rights, increase punishments for those operating reserved businesses and to improve the lists of businesses attached to the Foreign Business Act B.E. 2542 (1999) so that the control thereof shall not be under redundancy, therefore, it is essential to promulgate this Act.

Foreign Business Bill

(No.....)

B.E.

Bhumibol Adulyadej, Rex.

Given on this _____ day of _____ B.E.

Being the 60th year of the present reign.

His Majesty King Bhumibol Adulyadej has been pleasantly pleased to proclaim that it was expedient to amend the law governing the **business** operation of foreigners.

(Section 1 of the Bill)

Section 1. This **Act** shall be called the "Foreign **Business Act** (No....) BE.....".

(Section 2 of the Bill)

Section 2. This **Act** shall come into force from the day following the date of its publication in the Government Gazette.

Section 3. The following shall be repealed:

- (1) Announcement No. 281 of the National Executive Council dated November 24, 1972.
- (2) The **Act** of 1978 amending Announcement No. 281, of the National Executive Council dated November 24, 1972.
- (3) **Act** No. 2 of **1992** amending Announcement No. 281 of the National Executive Council dated November 24, 1972.

(Section 3 of the Bill: The definition for “Foreigner” in Section 4 of the Foreign Business Act B.E. 2542 (1999) shall be repealed and replaced by the following:)

Section 4. In this Act:

"Foreigner" means

- (1) Natural person not of Thai nationality.
- (2) Juristic person not registered in Thailand.
- (3) Juristic person registered in Thailand and having the following characteristics:
 - (a) Having half or more of the juristic person's capital shares held by persons under (1) or (2), or a juristic person having the persons under (1) or (2) investing with a value of half or more of the total capital of the juristic person, or a juristic person with the persons under (1) or (2) having half or more of the total voting powers under the law or under the articles of association or under an agreement of that juristic person.
 - (b) Limited partnership or registered ordinary partnership having the person under (1) as the managing partner or manager.
- (4) Juristic person registered in Thailand having half or more of its capital shares held by the person under (1), (2) or (3), or a juristic person having the persons under (1), (2) or (3) investing with the value of half or more of its total capital.

For the purpose of the definition, the shares of a limited company represented by share certificates that are issued to bearers shall be deemed as the shares of foreigners unless otherwise provided by ministerial regulations.

"Capital" means the registered capital of a limited company or paid-up capital of a public limited company or the money invested in a partnership or juristic person by its partners or its members.

"Minimum Capital" means the capital of the foreigners in the case where the foreigners are juristic persons registered in Thailand and, in the case where the foreigners are juristic persons not registered in Thailand or natural persons, it shall mean the foreign currencies that the foreigners bring in and use at the commencement of the **business** operation in Thailand.

"Business" means the business operation in agriculture, industry, handicraft, commerce, service or other dealings for business purpose.

"**Licensee**" means a foreigner who has obtained the License.

"**Certificate**" means a business operation certificate.

"**Certificate Grantee**" means a foreigner who has obtained the Certificate.

"**Committee**" means the Foreign Business Committee.

"**Competent Official**" means a person appointed by the Minister to undertake actions in compliance with this Act.

"**Registrar**" means a person appointed by the Minister as a foreign business registrar.

"**Director-General**" means the Director-General of Commercial Registration Department.

"**Minister**" means the Minister in charge of this Act.

Section 5. In permitting the foreigners to operate the businesses under this Act, the advantages and disadvantages to the nation's safety and security, economic and social development, public order or good moral, art, culture and tradition of the country, natural resource conservation, energy and environment, consumer protection, size of the enterprises, employment, technology transfer, and research and development shall be taken into account.

Section 6. The following foreigners shall be prohibited from operating any business in Thailand:

- (1) Foreigners deported or pending deportation.
- (2) Foreigners staying in Thailand without permission under the law governing immigrants or other laws.

Section 7. The following foreigners may operate a business upon obtaining a License from the Director-General and may operate only certain businesses and in the locality announced with the approval of the Cabinet by the Minister in the Government Gazette. The Minister may prescribe any conditions deemed expedient in the notification.

- (1) Foreigners born in Thailand but not granted Thai nationality under the law governing nationality or other laws.
- (2) A person who becomes a foreigner as a consequence of his nationality being revoked under the law governing nationality or other laws.

The application for a License, the issuance of the license and the period of permission shall be in accordance with the rules and procedures prescribed in the ministerial regulations.

In the case where the Director-General does not permit a foreigner under paragraph one to operate the business, the foreigner shall be entitled to lodge an appeal with the Minister and the provisions of paragraphs one and three of Section 20 shall be applicable *mutatis mutandis*.

Section 8. Subject to Section 6, Section 7, Section 10 and Section 12

- (1) Foreigners shall be prohibited from operating the business not permitted to them with special reasons as described in List One.
- (2) Foreigners shall be prohibited from operating any business concerning national safety and security, business affecting art and culture, tradition and folk handicraft or the business affecting natural resources or environment as prescribed in List Two unless permitted by the Minister with the approval of the Cabinet.
- (3) Foreigners shall be prohibited from operating the businesses prescribed in List Three in which Thai nationals are not ready to compete unless permitted by the Director-General with the approval of the Committee.

Section 9. Amendments or changes of the business categories under the Lists attached hereto shall be made by a royal decree except for the businesses under List Two, Group 1, in which case the amendments or changes shall be made by an act of parliament.

The Committee shall review the business categories under the Lists attached hereto at least once every one-year period from the date this Act comes into force and shall submit its opinion to the Cabinet. The foreigners who have operated the business not prescribed in List Two or List Three prior to the amendments or changes of business category under paragraph one and later on that business require a permission under this Act and the foreigners wish to continue operating that business shall notify the Director-General in order to obtain a Certificate in accordance with the rules and procedure described in Section 11.

During the period prescribed in paragraph three and while the Certificate has not been obtained, the foreigners shall not be deemed as non-licensed business operators under this Act.

Section 10. The provisions of Section 5, Section 8, Section 15, Section 17, and Section 18 shall not be applicable to the foreigners operating the business that are classified in the Lists attached hereto with a temporary permission from the Government of the Kingdom of Thailand.

The foreigners operating the business classified in the attached Lists under a treaty to which Thailand is a party or is obligated to abide by it shall be exempt from the application of the Sections stated in paragraph one and shall comply with the provisions of the treaty which may in return include the entitlement of the Thai nationals and Thai enterprises to operate the businesses in the country of the foreigners.

Section 11. The foreigners qualified under Section 10 wishing to operate the business under the attached Lists shall notify the Director-General under the rules and procedures prescribed in the ministerial regulations in order to obtain a Certificate. The Director-General shall issue the Certificates to the foreigners rapidly but shall not exceed 30 days from the date on which the written notification is filed, unless the Director-General is of the opinion that the notification does not comply with the rules and procedures prescribed in the ministerial regulations or is not

in accordance with Section 10. The Director-General shall in that case promptly notify the foreigners within 30 days of the date on which the written notification is filed.

The Certificates shall also specify the conditions prescribed by the Government or the treaty.

Section 12. In the case where the business of a foreigner that is promoted under the investment promotion law or permitted in writing to operate the industry or trade for export under the law governing the Industrial Estate Authority of Thailand or other laws are classified in List Two or List Three attached hereto, the foreigner shall notify the Director-General in order to obtain a Certificate. After the Director-General or his assigned Competent Official has examined the validity of the investment promotion certificate or the permit, the Director-General shall issue the Certificate rapidly but shall not exceed 30 days from the date on which he is notified of the acquisition of the investment promotion certificate or the permit as the case may be. In such case, the foreigner shall be exempted from the implication of this Act, except for Section 21, Section 22, Section 39, Section 40, and Section 42, throughout the period that the business is investment promoted or permitted for the export industry or trade operation as the case may be.

The issuance of the Certificate under paragraph one shall be in accordance with the rules and procedures prescribed by the Director-General.

Section 13. In the case where the provisions of other laws regulate shareholding, foreigners' partnership or investment, permission or prohibition for the foreigners in operating certain businesses or prescribe rules on the foreigner's business operation, the laws shall prevail and the provisions of this Act shall not be applicable to the areas that the other laws specifically govern.

Section 14. The minimum capital used at the commencement of the business operation shall not be less than that prescribed by ministerial regulations and shall in no case be less than two million Baht.

In the case where the businesses in the preceding paragraph require the licenses under the Lists attached hereto, the minimum capital to be prescribed in the ministerial regulations for each of the businesses shall in no case be less than three million Baht.

Ministerial regulations issued by virtue of this Section may also prescribe the time for the minimum capital to be brought or remitted into Thailand.

The provisions of this Section shall not apply in the events where the foreigners make the investment with the money or property derived from the business operation that has previously been in operation in Thailand in another business or use them as a share or an investment in other enterprises or juristic persons.

Section 15. The foreigners may operate the business under List Two only if Thai nationals or juristic persons that are not foreigners under this Act hold the shares of not less than 40% of the capital of that foreign juristic persons. Unless there is a reasonable cause, the Minister with the approval of the Cabinet may reduce the proportion requirement but it shall not be less than 25 percent and the number of Thai directors shall not be less than two-fifths of the total number of directors.

Section 16. Foreigners applying for a license shall have the following qualification and shall not have the prohibited characteristics below:

- (1) Being not younger than 20 years old.
- (2) Having residency or being permitted to temporarily enter into Thailand under the immigration law.
- (3) Being neither incompetent nor quasi-incompetent.
- (4) Not being a bankrupt.
- (5) Never having been punished by a court judgment or fined for an offense under this Act or Announcement No. 281 of the National Executive Council No dated November 24, 1972 unless they have been released at least five years prior to the date of the license application.
- (6) Never having been imprisoned for fraudulent acts, debtor cheating, embezzlement, offenses connected with trade under the Criminal Code or for offenses relating to fraudulent loans to the public or for offenses under the immigration law unless they have been released at least five years prior to the date of application.
- (7) Never having a license issued under this Act or under Notification No. 281 of the National Executive Council dated November 24, 1972 revoked during the five-year period prior to the date of the license application.

In case of the juristic person being the license applicant, the Foreign directors, managers or the persons responsible for the operation of the juristic person shall also have the qualifications and shall not have the prohibited characteristics referred to in paragraph one.

Section 17. In applying for the permission to operate the business, the foreigners shall submit the applications to the Minister or Director-General in accordance with the rules and procedures prescribed in the ministerial regulations. The Cabinet, in case of the business under List Two, or the Director-General, in case of the business under List Three, shall approve or give permission, as the case may be, within 60 days of the date of the application. In the case where there is a cause for the Cabinet to be unable to give the approval within the period, it shall be extended as necessary but shall not exceed 60 days from the lapse of the period.

When the Cabinet has given the approval or when the Director-General has given the permission under paragraph one, the Minister or the Director-General shall issue the license within 15 days of the date of the Cabinet's approval or the date of the Director-General's permission.

In giving the approval, the Minister may prescribe the conditions as stipulated by the Cabinet or described in the ministerial regulations issued under Section 18 for case of businesses under List Two or the Director-General may prescribe the conditions as stipulated in the ministerial regulations issued under Section 18 for the case of businesses under List Three.

If the Cabinet does not permit the foreigners to operate the businesses under List Two, the Minister shall notify the foreigners of the decision in writing within 30 days and the reasons for the disapproval shall be clearly indicated.

If the Director-General does not permit the foreigners to operate the businesses under List Three, the Director-General shall notify the foreigners of the decision in writing within 15 days and of the reasons for the disapproval shall be expressly indicated. The foreigners are entitled to lodge an appeal with the Minister and the provisions of Section 20 shall apply *mutatis mutandis*.

Section 18. The Minister with the advice of the Committee is empowered to issue the ministerial regulations prescribing any of the following conditions for the foreign licensees to comply with;

- (1) The ratio of the capital and loans to be used in the permitted business.
- (2) Number of foreign directors who must have domicile in the Kingdom.
- (3) Number and period for keeping the minimum capital in the country.
- (4) Technology or assets.
- (5) Other necessary conditions.

Section 19. If it turns out that any licensee or certificate grantee:

- (1) violated the conditions prescribed by the Minister under paragraph one of Section 7;
- (2) does not comply with the conditions prescribed in paragraph two of Section 11 or paragraph three of Section 17;
- (3) violates Section 15;
- (4) lacks the qualifications or has the prohibited characteristics under Section 16; or
- (5) commits the offenses under Section 35.

Then in the cases under (1), (2), and (3), the Director-General shall give a written notification to the licensee or the certificate grantee instructing them to comply with the conditions under paragraph one of Section 7, paragraph two of Section 11 or paragraph three of Section 17 or correctly comply with Section 15, as the case may be, within the period that he deems appropriate. If the licensee or certificate grantee does not comply with the instruction as notified by the Director-General in writing without any appropriate reason, the Director-General shall be empowered to temporarily suspend the license or business operation for a suitable period but it must not exceed 60 days from the date of instruction. At the expiry of the period, if the foreigner has not yet made a complete correction, the Director-General shall consider revoking the license or certificate or make a recommendation to the Minister to consider revoking the license as the case may be.

In the case of (4) and (5), the Director-General shall consider revoking the license or make a recommendation to the Minister to consider revoking the license as the case may be.

Section 20. If the Director-General temporarily suspends the license or the business operation or revokes the license or certificate under paragraph two of Section 19, the licensee or the certificate grantee shall be entitled to lodge an appeal in writing with the Minister within 30 days of the date on which it receives the instruction.

The appeal will not stay the enforcement of the Director-General's instruction unless otherwise ordered by the Minister with the advice of the Committee.

The Minister shall make a decision on the appeal within 30 days of the date on which the appeal is submitted. The decision of the Minister shall be final.

Section 21. Subject to Section 7, Section 19, and Sections 20, the license shall be indefinitely valid until the licensee stops doing the permitted business. The certificate shall be valid for a period permitted by the Thai Government or as prescribed by the treaty for such business operation or throughout the period for which such business is investment promoted or the export industry or trade is allowed to be operated as the case may be except where the certificate grantee stops the permitted business operation prior to the expiry of the period, the certificate shall be valid until then.

The licensee or certificate grantee shall display the license or certificate at an overt place in his business premises.

If the license or the certificate is damaged or lost, an application for a substitute shall be made to the registrar within 15 days of the date on which the defect or loss is known.

The application and issuance of the substitute license or certificate shall be in accordance with the forms and procedures prescribed by the Minister but the period for issuing the substitute shall not exceed 30 days from the date on which the application is received. The substitute shall be deemed the document substituting the license or certificate until a new license or certificate is obtained.

Section 22. If the license or the certificate grantee stops the business operations or relocates the office or place of business, a notification on the stoppage shall be filed with the registrar within 15 days of the stoppage date or relocation date in accordance with the forms and procedures prescribed in the ministerial regulations.

Section 23. There shall be a Foreign **Business** Committee consisting of the Permanent Secretary of the Ministry of Commerce as the Chairperson, Representative of the Office of the National Economic and Social Development Board, Representative of the Office of the Board of Investment, Representative of the Ministry of Defence, Representative of the Ministry of Finance, Representative of the Ministry of Foreign Affairs, Representative of the Ministry of Agriculture and Cooperative, Representative of the Ministry of Transport and Communications, Representative of the Ministry of Interior, Representative of the Ministry of Labour and Social Welfare, Representative of the Ministry of Science, Technology and Environment, Representative of the Ministry of Industry, Representative of the Ministry of Education, Representative of the Ministry of Public Health, Representative of the Office of the Consumer Protection Board, Representative of the Royal Thai Police, Representative of the Thai Chamber

of Commerce, Representative of the Federation of Thai Industries, Representative of the Thai Bankers Association and no more than 5 learned persons as appointed by the Minister as the Committee Members and the Director-General of the Commercial Registration Department shall be the Committee Member and Secretary.

The learned persons shall have the knowledge and expertise in economics, law, commerce, science, technology, environment, trade, investment, business administration, or industry and shall not be advisors to political parties or have any political position.

In the case where the representatives in Paragraph one are the representatives of government units, they shall have the positions that, in ranking, are not lower than Director-General position or equivalent thereof. And, in the case where they are the representatives of the Thai Chamber of Commerce, the Federation of Thai Industries, the Thai Bankers Association, they shall have the position ranking of not lower than a director of the Chamber, Federation or Association.

Section 24. The learned committee members shall have the tenure of two years.

In the case where a committee member vacates the office prior to the expiry of his term or in the case where the Minister appoints additional committee members while the appointed committee members still have the tenure, the substitute committee members or the additional committee members shall retain their office during such time only as the appointed committee members are entitled to retain the office.

The learned committee members leaving the office shall be eligible for reappointment but they may not retain the office for two successive terms.

Section 25. Apart from leaving the office under Section 24, the learned committee members shall leave the office upon;

- (1) Death;
- (2) Resignation;
- (3) Being removed by the Minister due to disgraceful conduct, malfeasance, breaching his duty or being deficient in abilities;
- (4) Being declared bankrupt;
- (5) Being incompetent or quasi-incompetent;
- (6) Being imprisoned by a final judgment except for offenses negligently committed or for misdemeanor offenses; or
- (7) Lacking the qualification under paragraph two of Section 23.

Section 26. The Committee has the authority as prescribed in this Act and shall have the following duties:

- (1) Advising, recommending or giving opinions to the Minister on the enactment of royal decrees and issuance of ministerial regulations under this Act or the prescription of business category and business operation locality of the foreigners under Section 7 or the application for the Cabinet's approval under Section 8 (2).
- (2) Studying, compiling, and preparing reports on the foreign business operation in Thailand including the impacts and appropriateness thereof, for presentations to the Minister from time to time but it shall not be less than once a year.
- (3) Advising, recommending or giving opinions to the Minister on other matters as he may assign.

Section 27. In holding the meetings of the Committee, at least one half of the total number of Committee members shall be present in order to constitute a quorum. If the Chairperson is not present or is unable to perform the duty, the Committee members attending the meeting shall elect one Committee member to preside over the meeting.

The decision of the meeting shall be taken by majority vote. One Committee member shall have one vote. In case of equality of the votes, the Chairperson of the meeting shall be entitled to a casting vote.

Section 28. The Committee shall be entitled to appoint subcommittees to consider or undertake any task assigned by the Committee and Section 27 shall apply to the meetings of the subcommittees *mutatis mutandis*.

Section 29. The Commercial Registration Department, Ministry of Commerce, shall act as the Secretary Office of the Committee and shall have the following authority:

- (1) Performing work in accordance with the resolutions of the Committee or as assigned by the Committee;
- (2) Presenting opinions to the Committee regarding the foreign business operations in Thailand for the benefit of the study, information compilation, and preparation of reports to the Minister; and
- (3) Performing general administrative work of the Committee.

Section 30. The Registrars and the Competent Officers shall have the authority:

- (1) To inquire in writing or summon any person for explanation of any facts, including submissions of documents or evidence necessary for verification of the facts;
- (2) To enter the place where the foreigners operate the business during business hours to inspect and ensure the compliance with this Act provided an approval in writing must first be obtained from the Director-General except in case of utmost emergency. In performing the duty, they shall have the authority to inquire the facts or demand any

documents or evidence necessary for the examination of the facts from the persons staying in the said place.

In performing the duty under (2), the proprietor or the possessor of the place shall reasonably assist the registrars and the competent officials. In this regard, the registrars and the competent officials shall not act in a threatening manner or in a searching manner under the Criminal Procedure Code and shall give a notice in writing to the proprietor or the possessor of the place not less than three days in advance, except in case of utmost emergency and, upon the completion of the duty, a written report of the result shall promptly be made to the Minister.

Section 31. If any person requests an examination or copy of the documents or requests the registrars to make copies or photocopies together with a certification thereof or requests the registrars to certify the statements kept by the registrar, the registrar shall rapidly grant a permission, except where the documents by its nature are prohibited from being disclosed by law governing official information or other laws. The applicant shall pay the fees as prescribed in the ministerial regulations.

Sections 32. The competent officials must have identity cards in accordance with the form prescribed in the ministerial regulations. In carrying out the duty, the competent officials must present the identity cards to the persons concerned.

Section 33. In carrying out the duty under this Act, the Committee members, the Director-General, the registrars, the competent officials, and the persons carrying out the duty jointly with the competent officials shall be the competent officials under the Criminal Code.

Section 34. Any foreigner granted with the license or certificate whose license being suspended or revoked or being ordered to stop the licensed business operation and having lost the right to appeal or being ordered by the Minister with a final decision to suspend or revoke the license or to stop the business operation still carries on the business operation shall be punishable with an imprisonment of not exceeding three years or a fine from 100,000 Baht to 1,000,000 Baht or both, and also a fine of 10,000 Baht per day throughout the period of violation.

(Section 4 of the Bill: Section 35 of the Foreign Business Act BE 2542 (1999) shall be repealed and replaced by the following:)

Section 35. Any foreigner, being granted the license to operate any business under this Act, who takes part in a business owned by other foreigners not permitted to operate the business under this Act or operates the business jointly owned by such other foreigners by showing that he is the sole owner of the business in order for such other foreigners to avoid or violate the provisions of this Act, shall be punished with an imprisonment of not exceeding three years or a fine from 500,000 Baht to 5,000,000 Baht or both and the Court shall order the dissolution of such joint business or business operation. Any violation of the Court's order, it is punishable with a fine of 50,000 Baht to 250,000 Baht per day throughout the period of violation.

(Section 5 of the Bill: Section 36 of the Foreign Business Act BE 2542 (1999) shall be repealed and replaced by the following:)

Section 36. Any Thai national or juristic person that is not a foreigner under this Act, who aids or abets or takes part in the business operation of the foreigners whose business falls under the Lists attached hereto and the foreigners are not permitted to operate the business or taking part in the business operation of the foreigner by showing that he or it is the sole owner of the business or holding shares on behalf of the foreigners in any partnership or limited company or juristic person in order for the foreigners to operate the business in avoidance of or violation to the provisions of this Act, including the foreigners allowing Thai nationals or juristic persons that are not foreigners under this Act to do so, shall be punished with an imprisonment of not exceeding three years or a fine from 500,000 Baht to 5,000,000 Baht or both, and the Court shall order a stoppage of the aiding or abetting or order a stoppage of the joint business operation or order a stoppage of share holding or a cessation of the partnership as the case may be. Violators of the Court's order shall be subject to a punishment with a fine of 50,000 Baht to 250,000 Baht per day throughout the period of violation.

(Section 6 of the Bill: Section 37 of the Foreign Business Act BE 2542 (1999) shall be repealed and replaced by the following:)

Section 37. Any foreigner who operates a business in violation of Section 6, Section 7, and Section 8 shall be punishable with an imprisonment of not exceeding three years or a fine from 500,000 Baht to 5,000,000 Baht or both and the Court shall order a stoppage of the business operation or the dissolution of the business or order a cessation of the shareholding or partnership as the case may be. Violator of the Court's order shall be subject to punishment with a fine of 50,000 Baht to 250,000 Baht per day throughout the period of violation.

Section 38. Any foreigner who operates the business in violation of Section 14 or in violation of the conditions under Section 18 (3) shall be subject to a punishment with a fine from 100,000 Baht to 1,000,000 Baht and a fine of 10,000 Baht to 50,000 Baht per day throughout the period of violation.

Section 39. Any licensee or certificate grantee not complying with paragraph two or paragraph three of Section 21 or violating Section 22 shall be subject to a punishment with a fine of not exceeding 5,000 Baht.

Section 40. Any person, not complying with the inquiry letters or summons of the registrars or competent officials or not giving facts or not submitting documents or evidence upon being inquired or summoned for examination by the registrars or competent officials or not assisting the registrars or competent officials under Section 30 without due reasons shall be subject to a punishment with a fine of not exceeding 5,000 Baht.

(Section 7 of the Bill: Section 41 of the Foreign Business Act BE 2542 (1999) shall be repealed and replaced by the following:)

Section 41. In the case where the juristic person commits the offense under Section 35, Section 36, and Section 37, the directors, partners or persons authorised to act on behalf of juristic person who collaborate with such offense or do not reasonably manage to prevent such offense shall be subject to an imprisonment for such offense as prescribed by laws.

Section 42. In case of the offenses under Section 39 and Section 40, the Director-General or the persons assigned by the Director-General shall be empowered to settle the case by fining.

Upon the accused having paid the fine in accordance with the amount settled by the Director-General or his assignees within 30 days of the date of settlement, such case shall be settled.

Section 43. All royal decrees, ministerial regulations, notifications, and orders being in force on the date this Act becomes effective shall still be in effect to the extent that they are not conflicting with or are contradictory to the provisions of this Act until the royal decrees, ministerial regulations, notifications, and orders issued under this Act are in effect.

Section 44. The foreigners, being granted with the rights or permitted to operate the businesses under Announcement No. 281 of the National Executive Council dated November 24, 1972 prior to this Act coming into force, shall be entitled or permitted to continue the operation of the business in accordance with the conditions and periods stated in the granted rights or permits.

Section 45. Foreigners who have been operating the businesses prescribed in the Lists attached hereto on the date on which this Act comes into force and the businesses did not fall within any of the lists attached to Notification No. 281 of the National Executive Council dated November 24, 1972 and wish to continue operating the businesses shall notify the Director-General in order to obtain a certificate in accordance with the rules and procedures described in Section 11 within one year of the date on which this Act comes into force. While the foreigners have not obtained the certificates, they shall not be treated as foreigners who operate the businesses without permission under this Act.

Section 46. The Minister of Commerce shall be in charge and control of this Act and shall be empowered to appoint the registrars and competent officials and to issue the ministerial regulations prescribing the fees within the limits of the rates attached hereto as well as to give fee exemption and to designate other business to implement this Act.

The ministerial regulations shall come into force following publication in the Government Gazette.

Provisional Clauses

(Section 8 of the Bill)

Section 47: If any juristic person registered in Thailand that is not a foreigner under the definition given in the Foreign Business Act B.E. 2542 (1999) but is a foreigner under the definition under this Act and has operated a business specified in the List attached to this Act on the effective date of this Act wishes to carry on such business, he shall apply for a certificate with the Director-General under the criteria and procedure prescribed by the Director-General within 1 (one) year from the effective date of this Act. Upon receiving the certificate, he shall carry on that business under the following conditions:

- (1) In case of a business in List 3, he shall carry on until the business operation is stopped;
- (2) In case of a business in List 1 or 2, he shall carry on for 2 (two) years from the effective date of this Act;

If a Foreigner under paragraph one fails to apply for the certificate within the period of time prescribed by the Director-General or has operated the business in List 1 or 2 after the end of the two-year deadline without permission, he shall be punished for such offense as stipulated in the Foreign Business Act B.E. 2542 (1999) amended by this Act.

(Section 9 of the Bill)

Section 48: A person who has violated Section 6, Section 7 or Section 8 whose punishment is stipulated in Section 37 or who has violated Section 35 or Section 36 of the Foreign Business Act B.E. 2542 (1999) prior to the effective date of this Act, if he notified the Director-General of his offense under the criteria and procedure prescribed by the Director-General, that is within ninety (90) days from the effective date of this Act, complies with this Act so that he shall not be deemed to have violated Sections 6, 7, 8, 35 or 36 or stops operation of that business in violation of the provision of that Section, as the case may be, within one (1) year from the effective date of this Act, shall not be punished for such offense as prescribed by law.

The provision of paragraph one shall not be applied to an person violating Section 6,7, 8, 35 or 36 of the Foreign Business Act B.E. 2542 (1999) whose case is under proceeding of an enquiry official or the Court.

Countersigned:

Fees

1. License application
 - (a) License application under Section 7 = 1,000 Baht
 - (b) License application under Section 17 = 2,000 Baht
 - (c) Certificate application under Section 11 or Section 12 = 2,000 Baht
2. License
 - (a) License under Section 7 = 5,000 Baht
 - (b) License for List Two Businesses
 - (1) Natural persons = 40,000 Baht
 - (2) Juristic persons = 10 Baht for each registered capital of 1,000 Baht with the minimum of 40,000 Baht and the

maximum of 500,000 Baht; fraction of 1,000 Baht is treated as 1,000 Baht.

- (c) License for List Three Businesses
 - (1) Natural persons = 20,000 Baht
 - (2) Juristic persons = 5 Baht for each registered capital of 1,000 Baht with the minimum of 20,000 Baht and the maximum of 250,000 Baht; fraction of capital of 1,000 Baht is treated as 1,000 Baht.
- 3. Certificate = 20,000 Baht
- 4. Replacement of License or Certificate = 5,000 Baht
- 5. Appeal
 - (a) Appeal against disapproval order under Section 7 = 1,000 Baht
 - (b) Appeal against disapproval order under Section 17 = 2,000 Baht
 - (c) Appeal against suspension or revocation of License or Certificate under Section 20 = 2,000 Baht
- 6. Notification on closure or relocation of office or business premises 1,000 Baht
- 7. Application for amendment to the particulars in the registration or License or Certificate 1,000 Baht
- 8. Searching or copying of documents 200 Baht for each item
- 9. Certified copies or certified photocopies 100 Baht a page
- 10. Certificate for registered statements 100 Baht for each item

Lists Attached to the Foreign Business Act B.E. 2542 (1999)

LIST ONE

The businesses not permitted for foreigners to operate due to special reasons:

- (1) Newspaper business, radio broadcasting or television station business.
- (2) Rice farming, farming or gardening.
- (3) Animal farming.
- (4) Forestry and wood fabrication from natural forest.
- (5) Fishery for marine animals in Thai waters and within Thailand specific economic zones.
- (6) Extraction of Thai herbs.
- (7) Trading and auctioning Thai antiques or national historical objects.
- (8) Making or casting Buddha images and monk alms bowls.
- (9) Land trading.

LIST TWO

The businesses related to the national safety or security or affecting arts and culture, tradition, folk handicraft or natural resource and environment.

- Group 1: The businesses related to the national safety or security
- (1) Production, selling, repairing and maintenance of:
 - (a) firearms, ammunition, gun powder, explosives.
 - (b) Accessories of firearms, ammunition, and explosives.
 - (c) Armaments, ships, air-craft or military vehicles.
 - (d) Equipment or components, all categories of war materials.
 - (2) Domestic land, waterway or air transportation, including domestic airline business.
- Group 2: The businesses affecting arts and culture traditional and folk handicraft:
- (1) Trading antiques or art objects being Thai arts and handicraft.
 - (2) Production of carved wood.
 - (3) Silkworm farming, production of Thai silk yarn, weaving Thai silk or Thai silk pattern printing.
 - (4) Production of Thai musical instruments.
 - (5) Production of goldware, silverware, nielloware, bronzeware or lacquerware.
 - (6) Production of crockery of Thai arts and culture.
- Group 3: The businesses affecting natural resources or environment:
- (1) Manufacturing sugar from sugarcane;
 - (2) Salt farming, including underground salt;
 - (3) Rock salt mining;
 - (4) Mining, including rock blasting or crushing;
 - (5) Wood fabrication for furniture and utensil production.

LIST THREE

The **business** which Thai nationals are not yet ready to compete with foreigners:

- (1) Rice milling and flour production from rice and farm produce.
- (2) Fishery, specifically marine animal cultures.
- (3) Forestry from forestation.
- (4) Production of plywood, veneer board, chipboard or hardboard.
- (5) Production of lime.
- (6) Accounting service business.
- (7) Legal service business.
- (8) Architecture service business.
- (9) Engineering service business.
- (10) Construction, except for:
 - (a) Construction rendering basic services to the public in public utilities or transport requiring special tools, machinery, technology or construction expertise having the foreigners' minimum capital of 500 million Baht or more.
 - (b) Other categories of construction as prescribed by the ministerial regulations.
- (11) Broker or agent business, except:
 - (a) Being broker or agent for underwriting securities or services connected with future trading of commodities or financing instruments or securities.
 - (b) Being broker or agent for trading or procuring goods or services necessary for production or rendering services amongst affiliated enterprises.
 - (c) Being broker or agent for trading, purchasing or distributing or seeking both domestic and foreign markets for selling domestically manufactured or imported goods in the manner of international business operations having the foreigners' minimum capital 100 million Baht or more.
 - (d) Being broker or agent of other category as prescribed by the ministerial regulations.

- (12) Auction, except:
 - (a) Auction in the manner of international bidding not being the auction of antiques, historical artifacts or art objects which are Thai works of arts, handicraft or antiques or having the historical value.
 - (b) Other categories of auction as prescribed by the ministerial regulations.

(Section 11 of the Bill: Clauses (13), (14), (15) and (21) of List 3 of the Foreign Business Act BE 2542 (1999) shall be repealed and replaced by the following:)

- (13) Internal trade connected with native products or produces not yet prohibited by law, except future trading under the law on agricultural futures trading where the goods shall not delivered.
- (14) Retailing all categories of goods.
- (15) Wholesaling all categories of goods.
- (16) Advertising business.
- (17) Hotel business, except for hotel management service.

(Section 10 of the Bill: Clause (18) in List 3 attached to the Foreign Business Act BE 2542 (1999) shall be revoked.

- (19) Selling food or beverages.
- (20) Plant cultivation and propagation business.
- (21) Other categories of service, except
 - (a) Service business connected with future trading business under the law on agricultural futures trading;
 - (b) Securities business, derivative business and connected businesses under the law on securities and exchange;
 - (c) Banking service under the law on commercial banks;
 - (d) Finance business and credit foncier business under the law on operation of finance, securities and credit foncier businesses;
 - (e) Other service businesses as prescribed in the ministerial regulations.