



Expat Counsel

By James Finch and Nilobon Tangprasit

OWNING A HOTEL OR GUEST HOUSE IN THAILAND

Part III: Can a foreigner do it?

We are talking about the ownership options that foreigners have for operating hotels in Thailand. In the last couple of columns we have talked about the possibility of operating in your own name (generally not possible for foreigners), using nominal Thai owners and minority company ownership.

Another option is to qualify for Board of Investment (BoI) promotion. The BoI is the government agency that offers incentives to foreign investors to put their money in Thailand in ways deemed meritorious of encouragement by the Thai government. In this case, if the BoI promotion allowed for it, you as a foreigner could have a company in which you owned a majority or even all of the shares.

Share ownership is a matter for the BoI to decide on a case-by-case basis, but it can allow limits on foreign equity to be relaxed for your company. Also, you wouldn't have to worry about the fact that you might be denied a license under the Foreign Business Act (FBA). The reason for this is that if you get a BoI promotion, the Department of Business Development, in charge of licenses under the FBA, must issue a certificate allowing the investment.

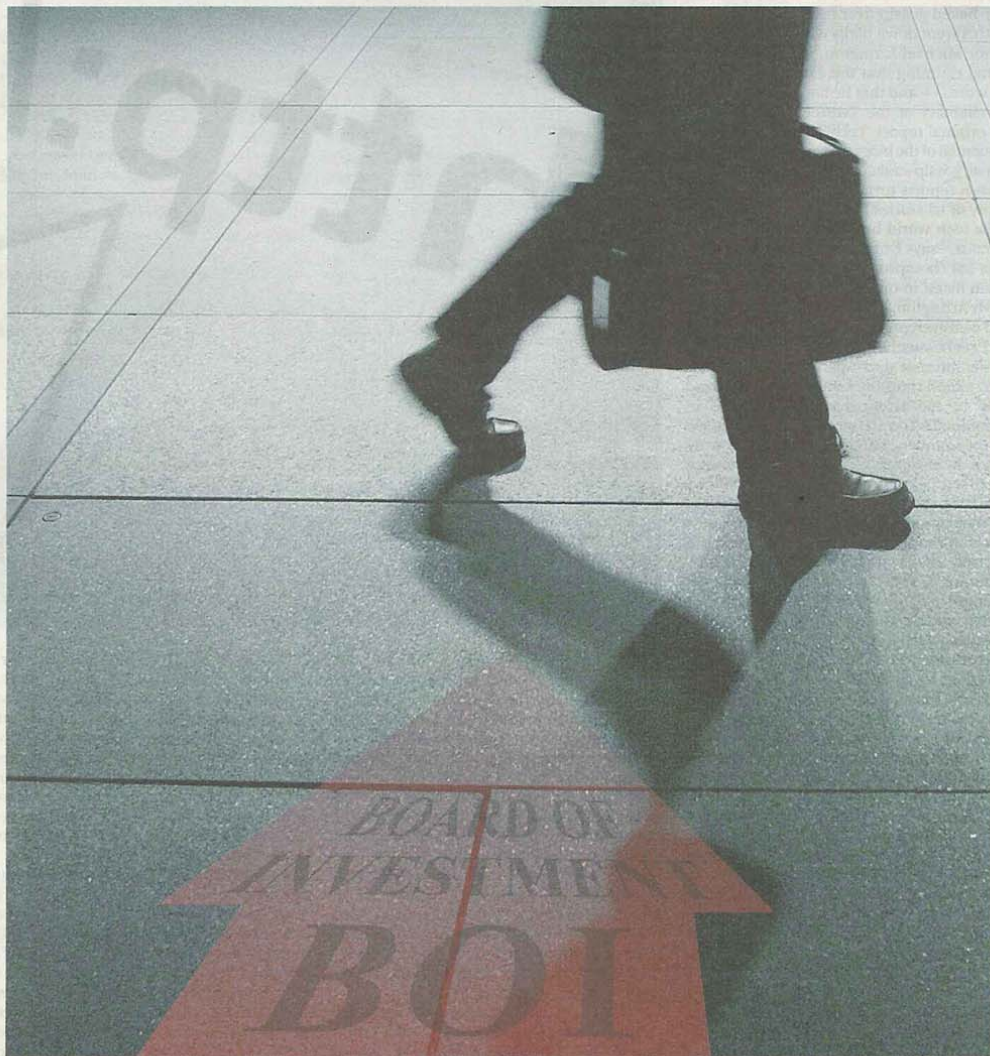
The minimum BoI investment is quite modest — one million baht. For hotels, however, only bigger projects need apply. The minimum size limit for hotels under BoI requirements is 100 rooms. Also, the application form is scrutinised on a case-by-case basis by the BoI and the BoI is now only considering investments in four, five and six star hotels.

Although a BoI project can be located anywhere in Thailand, the benefits are more generous in the remote and underprivileged areas. The country is divided into three zones. For example, Bangkok is in Zone 1, and there is corporate tax exemption in Zone 1 only for projects in industrial estates or promoted industrial zones. For projects such as hotels that have BoI promotion in Zone 1 there are, however, reductions on duties on imported materials and equipment.

By comparison, for BoI promotions in Zone 3, the provinces deemed most needy of investment by the BoI, there is a complete exemption of import duties of machinery. Also, there is corporate tax exemption for at least eight years, and in a number of provinces this corporate tax exemption is partially extended after the exemption period. There are other possible benefits, too, for projects in Zone 3, such as accelerated depreciation and double deduction of certain basic costs.

Application criteria, forms and criteria can be seen on www.boi.go.th, the BoI website.

Turning to the world of treaties, there is one exception to the limitation on foreigners directly owning hotels. US citizens, because



of the Treaty of Amity between the US and Thailand, can apply for foreign business certificates, certifying their nationalities. This certification is practically automatic. They can then invest in a hotel that is 100% foreign owned, as long as 51% of the shares of the company owning the hotel are owned by US citizens.

Normally under the FBA the minimum capital the foreigner must invest in a business like a hotel is the greater of 25% of three years estimated expenses of the business or three million baht. Until Aug 30 of

this year, and afterwards if the existing benefit is renewed by the Ministry of Commerce, US citizens have no such investment limit. After this date, and if the benefit is not extended, US citizens will have to raise their investments in these projects to the above minimum level, but can still get the business up and running now and put in most of the money later.

Of course you have to put in something to start up your business, even if you do it under the Treaty of Amity. But small hotels are routinely opened by Thais with only a

small investment. If you are a US citizen you have the unique opportunity to do this, too. ■

James Finch of Chavalit Finch and Partners
(finch@chavalitfinchlaw.com)
and Nilobon Tangprasit of Siam City
Law Offices Ltd
(nilobon@siamcitylaw.com)

For more information visit
www.chavalitfinchlaw.com
Comments? Questions? Contact us at the
email addresses above.