



**The Role of the Foreign Business Act of 1999 (B.E. 2542) as A Foreign Direct
Investment Controlling Measure in Thailand**

by

Assistant Professor Dr. Theradej Manoleehagul

**This research is funded by the Academic Research Grant
of 2015**

Sukhothai Thammathirat Open University

Title: The Role of the Foreign Business Act of 1999 (B.E.2542) as a Foreign Direct Investment Controlling Measure in Thailand

Researcher: Assistant Professor Dr. Theradej Manoleehagul

Year: 2021

Abstract

For the past decades, Foreign Direct Investment (FDI) has been one of the most important instruments propelling developing economies such as Thailand. However, the benefits of FDI are not automatic; thus, an effective legal measure is required to govern FDI activities to maximize those beneficial aspects that result in the economic development of the country. Thailand is one example of such lack of an effective legal instrument to regulate FDI for economic development. This research project, *The Role of the Foreign Business Act of 1999 (B.E.2542) as A Foreign Direct Investment Controlling Measure in Thailand*, intends to shed light on the role of the Foreign Business Act of 1999, B.E. 2542 (FBA) as one of the most vital legal instruments concerning the control of foreign direct investment in Thailand. The FBA is the general rule that governs the entry of foreign investors to the Thai domestic market. Since the export-led industrialization period of the 1970s, FDI has been a crucial instrument to boost Thailand's economy. The government has been vigorously attracting FDI into the country. However, FDI is not a panacea for economic development as what is required is the effective implementation of a domestic legal framework to maximize the benefits of FDI. Thus, FDI controlling measures such as the FBA play an important role for Thailand. The main objectives of this research project are as follows: 1) To study the theory, concept, and fundamental principle in drafting the law concerning the foreign investment controlling measures, 2) To analyze the inherent issues in the implementation of the Foreign Business Act of 1999 as a tool to control foreign investment in Thailand, 3) To propose appropriate consideration to strengthen the implementation of the Foreign Business Act of 1999 as a controlling measure for foreign investment in Thailand

This research is conducted based on the qualitative research methodology together with in- depth interviews. The study reviews literatures, books, academic articles, reports, research and studies relating to the controlling measures of foreign direct investments (FDI), the application of the law and the enforcement mechanisms regarding the control of FDI in Thailand. The study also includes in- depth interview of scholars, government officials, legal experts and practitioners in the field of international investment law in Thailand.

The research finds that; firstly, the theory, concept, and fundamental principle in drafting the FBA of 1999 are undermined by the protectionism concept, which was transplanted from its predecessor, the National Executive Council Announcement (NECA) No. 281 (referred to in Thai as *Por Wor* 281). This negatively effects the implementation of the law. Second, the protectionism concept has transformed into the concept of three restricted businesses lists in the Annex of the Act which are broad and irrelevant to the current business environment of Thailand. The interpretation of the definition of 'Alien' or 'Foreigner' under the law is still subject to the ineffective implementation of doctrine of corporate ownership and control which makes the law unenforceable. All of these have led to the impracticality of the law with regard to the current foreign direct investment regime in Thailand. Lastly, in order to strengthen the implementation of FBA, the government authorities need to reconsider the model of FDI admission in Thailand. Also, the effective implementation of the doctrine of corporate ownership and control should be emphasized in the interpretation of 'foreigner' under the FBA.

Keywords: Foreign Direct Investment, Restricted Business List, Corporate Ownership and Control, Thailand