

ABSTRACT

Thesis Title : Legal Problems Relating to the Management of Foreign Held
Investment Property in Thailand Which is Dissolved or
Transferred

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This study aims at raising some legal problems and ascertaining suitable approaches to resolve such problems as affecting not only the law enforcement authorities involved but also the foreign investors against whom the law is enforced upon dissolution or transfer of business. Although Thailand has currently witnessed a plurality of foreign investors that participate in various fields of business each having to comply with any specific law, the law relating to promotion of foreign investment provides no practicable criteria for the commencement of its coming into force with respect to dissolution or transfer of the business conducted by foreign investors. The dissolution or transfer of business implies a return of contributions which is the final process for an investment termination; however, the term "dissolution or transfer of business" fails to be defined by any statutory provisions, and therefore the achievement of law enforcement seems somewhat deviating because the loophole has continuously occurred open to dispute over the question of law. This situation appears to be out of line with the Government's policy which aims at ensuring speedy and expedient process for the management of such property.

Among legal problems arising from the management of such property, the vague provisions of law may be one problematic issue in that the legal terms regarding a foreign held investment property to be managed under the law usually come out with many different terms leading to legal interpretation such as what extent the competent officials involved can manage the said property, whether or not the property transferee is protected by reference to good faith principle, and so on. With a view to resolving the problems, it is suggested that necessary legal definitions and presumptions be added as guidelines for judicial rulings. These suggestions will consequently be accepted by the foreign investors who study such amended laws as understandable in the same direction.

Since the particular provisions regarding the management of foreign held investment property cannot be found in the law on foreign investment in Thailand, legal problems have to be traditionally resolved by reference to the Land Code, the Civil and Commercial Code, and the Civil Procedure Code. However, the provisions of such Codes are dated and impractically applied in the present circumstances where numerous juristic persons frequently attempt at avoiding involvement in any statutes. Proposed in this study are several amendments of existing laws in order to eradicate the legal problems. In the first instance the foreign held investment property to be managed by the competent officials should be clearly defined in accordance with the relevant fields of business. In addition, related statutes should be updated, empowering the judiciary to enjoy wider discretion. It is also proposed that section 1246(5) of the Civil and Commercial Code should be amended, thereby empowering the judiciary to order the restitution of juristic entity at the request of an interested party despite an overdue time-limit notified under the Government Gazette, as held through Judgment No.220/2526 of the Supreme Court. Accordingly, the foreign investors will have confidence in the laws and take such legal approaches into consideration prior to their investing in Thailand. The more speedily and completely the amendment or enactment of laws is implemented for enforcement, the more actual benefit it brings to foreign investors and competent authorities as well as domestically economical outcome.