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The Legal Loopholes in Space law: The Case of Shin Corporation of Thailand - Temasek Holding of Singapore Business Deal

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[The opinions and conclusions expressed herein are of the author. This article is not intended and should not be thought to represent official ideas, attitudes, or policies of Thailand.]

ABSTRACT

The commercial use of outer space, including the moon and other celestial bodies, particularly in the field of telecommunication has been accelerating in developing countries due to the potential of telecommunication in advancing development. This article aims to present the legal loopholes in space law by examining the commercial space activity, telecommunication service, through the view of Thailand under the framework of GATS. Using the acquisition of Shin Corporation of Thailand, by Temasek Holdings – the Singaporean Government's investment arm – as a case study, the article gives the overview about the Foreign Business Act B.E. 2542 (1999) of Thailand and the Thai regulations according to the GATS commitments on foreign equity cap in order to point out the legal effect and the legal gap resulting from such deal.

CONTENTS

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I. INTRODUCTION

The scandalous 2006 acquisition of Shin Corporation of Thailand, by Temasek Holdings – the Singaporean Government's investment arm – has caused many effects in Thailand. The deal which involved the transfer of 49.6% of shares of Shin Corporation for an approximate amount of Baht 73,300 million was so well-planned that it did not result in the payment of any tax, partially resulting in a bloodless coup and an investigation of the deal. To deal with international economic law and international space law, this article aims to examine and analyse the foreign investment and issues relating to commercial space activities and present the legal loopholes in space law from the viewpoint of Thailand by using the acquisition as a case study.

This article is divided into three main parts: basic telecommunication of Thailand under the framework of the General Agreements on Trade in Services (GATS), Thai laws on foreign investment and legal problems with space law. The first part will explain the general obligations and specific commitments of Thailand under GATS. The telecommunication sector will be the focus of this section as it is part of the business conducted by Shin Corporation. The second part will specifically concentrate on Thai laws by showing the relation

between Thai laws on foreign investment and the abovementioned deal which reflects the weakness and conflict in legislation. In the core of this article, the third part will examine the space law applicable to the case study so as to evaluate the legal aspect.

II. BASIC TELECOMMUNICATION OF THAILAND UNDER THE FRAMEWORK OF GATS

General Agreement on Trade in Services (GATS) is a partially successful product of the conventional sources in the Uruguay round of trade negotiation on 15 April 1994. By mixing the outcome of all negotiations with the fifteen-page Marrakesh Agreement Establishing the World Trade Organization as a "final act" and as a "single package", GATS is an "International Agreement" according to the definition of "treaty" in the Vienna Convention on the Law of Treaties, 1969.[3] Therefore, Thailand, as a member, is obligated to fulfill the final act under the commitments which Thailand submitted to the World Trade Organization (WTO), following the objects and the purposes of the GATS. At the time of the signature of the final act, Thailand had submitted and agreed the schedules of specific commitments in services and some lists of exemption.

The General Agreement on Trade in Services (GATS) consists of three key parts, that is, the framework agreement and its annexes, the schedules of specific commitments and the lists of Most-Favoured Nation Treatment (MFN) exemptions (Article II) submitted by member governments. The first part gives an overview of the telecom service sector of Thailand under GATS and analyzes some considerations on the obligations of the additional commitments, by reference paper, undertaken by Thailand to the WTO. Market access and national treatment as well as the mode of delivery services, access to and use of public telecommunications transport networks and services will be specially focused on so as to link to the next part where the

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[3] *See* Vienna Convention on the Law of Treaties, Jan. 27, 1980, 1155 U.N.T.S. 331, art 2:

(a) "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

domestic law, the Foreign Business Act of Thailand B.E. 2542 (1999), will be taken into consideration.

A. General Obligations of Thailand under GATS

GATS is divided into 6 parts.[4] The general obligations and disciplines, specific commitments and progressive liberalization of part II, III and IV respectively, are the most important features. The part II, general obligations and disciplines, covers several significant principles, but the 5 obligations below are the most important general obligations relating to the telecommunication service,[5] namely,

i. Most Favoured Nation Treatment (MFN)

The MFN treatment is a fundamental principle of GATS being applied across all sectors and all members, and underlying the MFN treatment is the principle of non-discrimination, both de jure and de facto,[6] amongst the members of WTO.[7] Applying this principle to the Thai telecom service, for example, it accordingly means that Thailand shall accord services and service suppliers of any member treatment no less favourable than that provided for like services and service suppliers of any other country in term of the right to access to and use of public telecommunication transport networks and services. Nevertheless, Thailand provided some horizontal commitments according to the Schedule and the list of MFN exemptions attached to the Fourth Protocol. Even the duration of such exemptions, in principle, must be valid for only ten years.[8]

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4 General Agreement on Trade in Services, Jan. 1, 1995, 1869 U.N.T.S. 183 [hereinafter "GATS"].

5 Bunaramrueang Biyabutr, Basic telecommunication Trade in Services in the Framework of WTO and the Implementation of Additional Commitments in Reference Paper: Case Study of Thailand 17 (2005) (unpublished Masters thesis, Faculty of Law, Thammasat University). Also, see World Trade Organisation, *Annex: The General Agreement on Trade in Services (GATS) and Its Relation to the Telecommunication Service Sectors*, http://www.wto.org.

6 European Communities – Banana III, Appellate Body Report, WT/DS27/AB/R ¶ 234 (Sept. 25, 1997).

7 *Supra* note 4, art. II.

8 See the horizontal commitments and specific commitments on Telecom Service of Thailand – World Trade Organisation, *Telecommunication Services*, http://www.wto.org/english/tratop_e/ser v_e/telecom_e/telecom_e.htm.

ii. Transparency

The principle of transparency, laid down in Article III of GATS, requires the Member to publish promptly "all relevant measures of general application" that affect operation of the Agreement as well as to notify the Council for Trade in Services of new or changed laws, regulations or administrative guidelines that significantly affect trade in sectors subject to Specific Commitments.[9] These transparency obligations are particularly relevant in the service areas where the role of regulation – as a trade protective instrument and/or as a domestic policy tool – tends to feature more prominently than in most other segments of the economy.[10]

In brief, by this principle, members have four significant responsibilities to accomplish transparency, namely, (i) publish all relevant laws and regulations, (ii) establish enquiry points in order to provide specific information and respond to requests by service suppliers of any member, (iii) notify the Council for any obligations affected to the Agreements and (iv) protect the confidential information.[11]

iii. Domestic Regulation

Under Article VI, paragraph 2, members are committed to operating domestic mechanisms ("judicial, arbitral or administrative tribunals or procedures") where individual service suppliers may seek legal redressal.[12] At the request of an affected supplier, these mechanisms should provide for the "prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in service".[13]

Concisely, members have four main obligations according to the domestic regulation, that is, (i) appeals procedure, (ii) reasonable, objective and impartial

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9 *Supra* note 4, art. III.

10 World Trade Organisation, *The General Agreement on Trade in Services: An Introduction*, March 29, 2006, http://www.wto.org/english/tratop_e/serv_e/gsintr_e.doc.

11 *Supra* note 4.

12 *Supra* note 4.

13 *Supra* note 10.

administration of regulations, (iii) licensing, qualification and technical standards and (iv) taking account of international standards.[14]

iv. Monopolies and Exclusive Service Suppliers

Article VIII, paragraph 1 requires members to ensure that monopolies or exclusive service providers do not act in a manner inconsistent with the MFN obligation and commitments.[15] Article XXVIII (h) specifies, in turn, that a "monopoly supplier" is an entity that has been established by the member concerned, formally or in effect, as the sole supplier of a service.[16] This principle is very significant and strongly repeated in the framework reference paper of Negotiating Group on Basic Telecommunication (NGBT's Regulatory Framework Reference Paper).

v. Business Practices

Similar to Article VIII, Article IX refers to business practices that restrain competition and, thereby, restrict trade other than those falling under the monopoly-related provisions under Article VIII.[17] The Article requires each member to consult with any other member, upon request, with a view to eliminating such practices.

Moreover, there are two special business practices relating to telecom trade in services, namely, Government Procurement laid down under Article XIII, and Progressive Liberalization according to Part IV.

B. Commitments of Thailand under the Fourth Protocol[18]

As noted above, the obligations of any WTO member under GATS consist of the provisions of the Agreement and its Annexes as well as the specific commitments contained in the national schedule. The schedules are relatively complex documents in which each country identifies the service sectors to which it will apply the market access and national treatment obligations of

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14 World Trade Organization, *A Training Package Module: Services: GATS* 19 (1998).

15 *Supra* note 4, art. VIII, para 1.

16 *Supra* note 4, art. XXVIII (h).

17 *Supra* note 4, art. IX.

18 Fourth Protocol to the General Agreement on Trade in Services Concerning Basic Telecommunications, Apr. 30, 1997, 36 I.L.M. 354.

the GATS and any exceptions from those obligations it wishes to preserve.[19] The commitments and limitations are in every case entered with respect to each of the four modes of supply which constitute the definition of trade in services in Article I of the GATS: these are cross-border supply, consumption abroad, commercial presence and presence of natural persons. The definition could be briefly explained below.

Figure 1

Four Modes of Supplying Services under GATS[20]

Mode 1: Cross-border supply	The possibility for non-resident service suppliers to supply services cross-border into the member's territory (e.g. banking or architectural services transmitted via telecommunications or mail);
Mode 2: Consumption abroad	The freedom for the member's residents to purchase services in the territory of another member. On the other hand, it refers to situations where a service consumer (e.g. tourist or patient) moves into another member's territory to obtain a service;
Mode 3: Commercial presence	The opportunities for foreign service suppliers to establish, operate or expand a commercial presence in the member's territory, such as a branch, agency, or wholly-owned (e.g. domestic subsidiaries of foreign insurance companies or hotel chains);
Mode 4: Presence of natural persons	The possibilities offered for the entry and temporary stay in the member's territory of foreign individuals in order to supply a service. (e.g. accountants, doctors or teachers). The Annex on Movement of Natural Persons specifies, however, that members remain free to operate measures regarding citizenship, residence or access to the employment market on a permanent basis.

19 World Trade Organisation, *Guide to Reading the GATS Schedules of Specific Commitments and the List of Article II (MFN) Exemptions,* http://www.wto.org/english/tratop_e/serv_e/guide1_e.htm.

20 World Trade Organisation, *The General Agreement on Trade in Services (GATS): Objectives, Coverage and Disciplines*, http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm.

After knowing the four fundamental modes of supply under GATS, the next important issue relates to the legal details of Thailand's commitments on trade in services, particularly the specific commitments and schedules of Thailand under mode 1 and mode 3. Some additional commitments will, then, be explained at the end of this section.

In compliance with GATS Article XX, Thailand's schedule provides a clear description of sectors and sub-sectors, limitations on market access, limitations on national treatment, and additional commitments in four respective columns.[21] The commitments in the Schedule are varied depending on each of the four modes of supply. Notably, mode 1 (cross border) and mode 3 (commercial presence) are most frequently used for the provision of telecom services[22] and comprehensively relates to the next part which takes an account on the domestic law. This paper will not indulge in the details of each commitment, but only exemplify the general commitments – in particular, those on market access and national treatment – in order to provide a background when we consider the ratio of foreign capital in Shin Corporation and Temasek Holdings after the deal.

i. Specific Commitment and Schedules

Admittedly, a specific commitment in a services Schedule is an undertaking to provide market access and national treatment for the service activity in question on the terms, limitations, qualifications and conditions of WTO members.[23] The value of making a commitment is that the members bind themselves by the specified level of market access and national treatment, undertaking not to impose any new measures that would restrict entry into the market or the operation of the service.[24] Commitments can only be withdrawn or modified after agreement of compensatory adjustments with affected countries.[25] The main classifications of commitments could be distinguished.

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21 *Supra* note 8.

22 *Supra* note 8.

23 *Supra* note 4, art. XX ¶ 1.

24 *Supra* note 4, Part IV.

25 *Supra* note 4, art XXI.

1. Market Access

The commitments on market access are the most important. They are specified by all members in their schedules for the protection of the internal market. The market access provisions of GATS – Article VI paragraph 2 – cover six types of restrictions that must not be maintained in the absence of limitations.[26] The restrictions relate to (a) the number of service suppliers, (b) the value of service transactions or assets, (c) the number of operations or quantity of output, (d) the number of natural persons supplying a service, (e) the type of legal entity or joint venture and (f) the participation of foreign capital.[27] These measures, except for (e) and (f), are not necessarily discriminatory, i.e., they may affect national as well as foreign services or service suppliers. All limitations in Schedules fall into one of these categories. They comprise four types of quantitative restrictions plus limitations on types of legal entity and on foreign equity participation.[28]

Applying these conditions of market access to telecommunication service, we can differentiate into two core types: the mode of delivery of service in telecom sector and the access and use of public telecommunications transport networks and services.[29] An example of the mode of delivery of telecom service is "GMPCS" (Global Mobile Personal Communication Service), a service in mode 1 of which most members provide for restrictions in network access, "Roaming" by GSM (Global Systems for Mobile Communications) which follows the movement of consumers in terms of Mode 2, etc.

2. National Treatment

The national treatment obligation under Article XVII of the GATS is to accord to services and service suppliers of any other member treatment no less favourable than is accorded to domestic services and service suppliers.[30] A member wishing to maintain any limitations on national treatment — that

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26 *Supra* note 10, at 6.

27 *Supra* note 4, art. XVI.

28 *Supra* note 8.

29 Annex on Telecommunications to GATS.

30 *Supra* note 4, art. XVII ¶ 1.

is any measures which result in less-favourable treatment of foreign services or service suppliers — must indicate these limitations in the third column of its schedule.[31]

In the context of Thailand Telecommunication service, Thailand specified no limitations on national treatment on the supply of public of telecommunication services as long as foreign equity participation does not exceed 40 percent.[32]

ii. Additional Commitments: Reference Paper

The Reference Paper refers to additional commitments, beyond the specific commitments on market access and national treatment, created after the Uruguay round of trade negotiation. Additional commitments are not obligatory but a member may decide in a given sector to make additional commitments relating to measures other than those subject to scheduling under Articles XVI and XVII. These can include, for examples qualifications, standards and licensing matters. The reference paper in telecommunication sector covers six matters: competitive safeguard, interconnection, universal service, licensing processes, independent regulators and allocation of scarce resources.[33] To easily understand these additional commitments on telecommunication service, we can generally classify these matters into four groups: dominance, market access, competition and conditions on telecommunication competition.

In brief, dominance is considered in terms of major suppliers in telecommunication sector, in compliance with the essential facilities for transport network, and whether there is an abuse of dominant position according to competition law. Market access focuses on the transparency of licensing process abiding by MFN and the allocation and use of radio frequency, numbers and right of way which are scarce resources.[34] In terms

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31 *Supra* note 19. See the example of the limitation of national treatment of Thailand.

32 World Trade Organisation, *Telecommunications Commitments and Exemptions*, http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_commit_exempt_list_e.htm.

33 World Trade Organisation, *History of Telecommunication Negotiations*, http://www.wto.org.

34 World Trade Organisation, *Reference Paper on Basic Telecommunications – Allocation and Uses of Scare Resources*, http://www.wto.org/english/news_e/pres97_e/refpap-e.htm.

of competition, the detail suggests competitive safeguards by focusing on prevention of anti-competitive practices in telecommunications.[35] Interconnection and universal services are the conditions on telecommunication competition.

Thailand had initially provided specific additional commitments on telecommunication sector covering all six issues but preserved the right on essential facilities and major suppliers.[36]

III. THAI LAWS ON FOREIGN INVESTMENT

To stimulate economic growth in developing countries, foreign direct investment is an important factor. Moreover, a liberal economic policy supports the foreign investment. On the other hand, nationalism still influences developing countries, including Thailand, such that they wish to reserve their resources and business for their citizens. This controversy led to the enactment of law on foreign investment.

Thai laws on foreign investment, without exception, are passed to compromise the two schools of thought, liberalism and nationalism. The first law which defines 'foreigner' and restricts foreigners' business in Thailand can be traced back to the 1972 Announcement No. 281 of the National Executive Council B.E. 2515.[37] The definition of 'foreigner' was amended in 1992. Later due to inconsistency with the then economic conditions, investment and international trade,[38] it was repealed and replaced by the Foreign Business Act B.E. 2542 (1999). The next part will examine these laws with reference to their definition of 'foreign juristic person' and their loopholes before applying the laws to the business deal between Shin Corporation of Thailand and Temasek Holdings of Singapore and examining its consequences.

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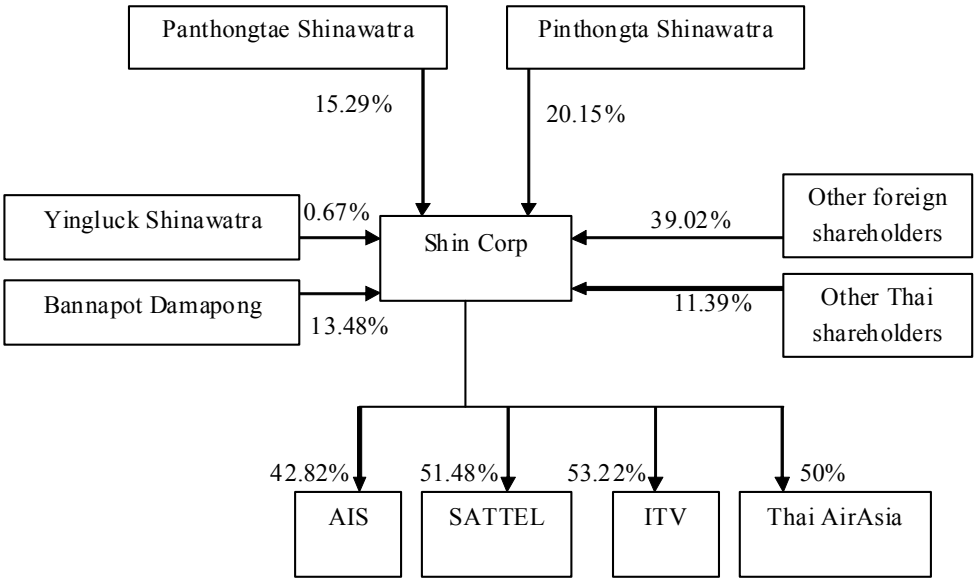
35 World Trade Organisation, *Reference Paper on Basic Telecommunications – Competitive Safeguards*, http://www.wto.org/english/news_e/pres97_e/refpap-e.htm.

36 World Trade Organisation, *Thailand-Condition Initial Offer*, TH/S/O/THA (Sept. 15, 2003). For details, *see* Biyabutr, *supra* note 5, at 93.

37 National Executive Council, Thailand, Announcement No. 281, B.E. 2515 (1972).

38 Remarks on Foreign Business Act, Thailand, B.E. 2542 (1999).

Figure 2
The shareholding structure as on January 20, 2006



A. Background of the Shin Corporation of Thailand – Temasek Holdings of Singapore business deal

In 1991, the Thai government granted a 30-year concession to Shin Corporation (Shin) – founded by Thaksin Shinawatra, former Prime Minister of Thailand and his family – to build, transfer and operate Thai satellites which are named as THAICOM series.

The concession is a Build-Transfer-Operate concession, of which name speaks for itself. Under this concession, Shin had to set up a new company to perform duties under the satellite operation agreement between Shin and MICT (Concession Agreement).[39] Shin Satellite Public Company Limited (SATTEL), which thereafter changed its name to Thaicom Public Company Limited, was founded in order to build satellites and then transfer them to the State. In reciprocation, the right to operate such telecommunication satellites remains with SATTEL.[40]

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39 Satellite Operation Agreement Between Shin and MICT [hereinafter "Concession Agreement"], § 4.

40 Concession Agreement, *supra* note 39, preamble ¶ 3, § 15.

Currently, there are four function satellites under Thailand's communication satellite fleet. THAICOM-1A was launched on December 1993 and on October 1994, THAICOM-2 was launched. THAICOM-3, launched in 1997, was replaced by THAICOM-5 on October 2006 due to power loss. THAICOM-4 or IPSTAR, launched on August 2005 is a new generation of broadband satellite that would serve the demand for high-speed broadband Internet access. They cover areas from Central Europe through Asia coasts.[40]

Figure 2 depicts the shareholding structure of Shin and SATTEL as on January 20, 2006, before the transaction. Shin Corp held shares in SATTEL to the tune of 51.48% which was in compliance with the shareholding ratio condition in the Concession Agreement.[41] The major shareholders of Shin securities, at that time, were the Shinawatras and their relatives.

Temasek is an Asian investment house owned by the government of Singapore. Its markets are mainly Singapore, Asia and other emerging economies. Amongst this, Thailand can be considered as one of its potential market. However, the name of Temasek became familiar to Thai people after the successful takeover of Shin Corp.

Temasek wished to purchase 49.59% of Shin's shares but the then 39.02% foreign shareholding ratio in Shin made such purchase impossible to succeed without turning Shin into a "foreign juristic person" under Thai domestic law. This would also terminate concessions in Shin's subsidiaries. Hence the transaction had to be completed through nominees, namely, Cedar Holdings and Aspen Holdings.

On January 23, 2006, during the term of Prime Minister Thaksin Shinawatra, Temasek – through its nominees – successfully acquired 49.59 % stake of Shin for an approximate amount of Baht 73,300 million, or Baht 49.25 per share. At that time, Baht 40.0171 equalled to USD 1.[42]

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41 FRANCIS LYALL & PAUL B. LARSEN, SPACE LAW: A TREATISE 378 (1st ed. 2009).

42 Concession Agreement, *supra* note 39, § 4.2. The original Concession Agreement mentioned that Shin has to hold at least 51% of the total shares in SATTEL. This clause was amended to decrease the ratio from 51% to 40% on October 27, 2004 during the Shinawatra administration.

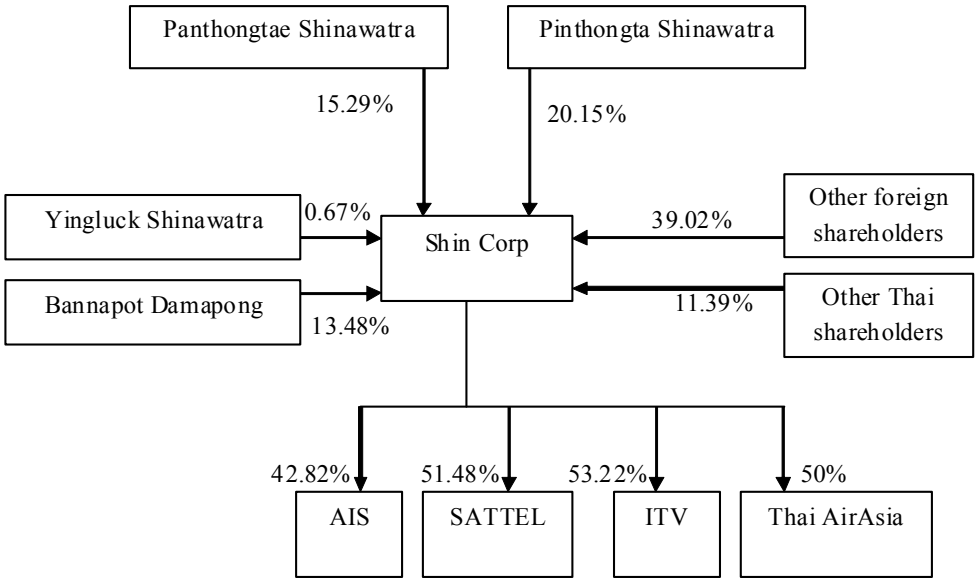
43 Bank of Thailand Foreign Exchange Rate, http://www2.bot.or.th/statistics/ReportPage.aspx?reportID=123&language=th.

Figure 3 indicates the structure of the deal and the shareholding structure after January 23, 2006. The 49.59% of shares were divided into 10.97% and 38.62% and purchased by Aspens Holdings and Cedar Holdings respectively.

This large portion of share acquisition reached the tender offer trigger point. However, with regard to SATTEL's stake, Cedar and Aspen were asked by the Securities and Exchange Commission not to make any tender offer for SATTEL's securities owing to the fact that Cedar and Aspen had no intention to acquire the SATTEL's securities and that it was considered immaterial to Shin's assets value.[44]

After the Shin-Temasek deal, SATTEL, one of the Shin's subsidiaries, operating four communication satellites under the awarded concession is indirectly controlled by Temasek, a Singaporean state-owned enterprise even though Shin changed its shareholding ratio in SATTEL from 51% to 41%.[45]

Figure 3
The shareholding structure as on January 20, 2006



44 *Shin Sell-Off: Ample Rich Ddeal Queried*, THE NATION, Jan. 27, 2006, http://www.nationmultimedia.com/2006/01/27/headlines/index.php?news=headlines_19764598.html.

45 *THAICOM Satellite Is Still Thai*, http://www.krusiam.com/community/forum2/view.asp?forumid=Cate00009&postid=ForumID0016676. As of August 5, 2010 Shin have held shares in SATTEL in an amount of 41.14% according to the Stock Exchange of Thailand, http://www.set.o r.th/set/companyholder.do?symbol=THCOM&language=en&country=US.

B. Thai Domestic Laws on Foreign Investment

To stimulate economic growth in developing countries, foreign direct investment is an important factor. On the other side, nationalism still has influence in developing countries, including Thailand, so they wish to reserve their resources and business for their nationals. This controversy leads to the enactment of general and specific legislations on foreign investment i.e. the Foreign Business Act B.E. 2542 (1999) (FBA), which governs the scope and types of permitted or prohibited business for foreigners in general, and the Telecommunications Business Act, B.E. 2544 (2001), which particularly focuses on telecommunication sector.

i. Foreign Business Act B.E. 2542 (1999) of Thailand

The Foreign Business Act B.E. 2542 (1999) (FBA) defines a foreigner in Section 4. The scope of this paper focuses only on "foreign juristic person", which is defined in Section 4 (2) – (4) as follows.

"Foreigner" means…

(2) Juristic person not registered in Thailand.

(3) Juristic person registered in Thailand 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.

  (b) Limited partnership or registered ordinary partner-ship 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.[46]

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[46] *Supra* note 38, art. 4.

Subsection (2) is simply understood. Subsections (3)-(4) use the phrase 'capital share'. As a result, in order to be considered a foreign juristic person, more than half of such juristic person's share has to be held by a foreigner. It does not have to track the shareholding ratio of the shareholder again. This clause solved the problem on the interpretation of the repealed law on foreign investment, the Announcement No. 281 of the National Executive Council B.E. 2515 (1972).[47] In other words, it allows foreign firms to set up subsidiaries that are nominally owned by Thais but actually controlled by foreigners.[48]

In addition, the concept of foreign juristic person had been challenged on the basis of voting right structure. The share ratio of 51-49 can be twisted to form a nominee company by mentioning the 51% shares as a preferred share which has less voting right. The outcome is that the foreign shareholders can always control majority vote even though they have a lower share ratio. This practice has been approved by the Thai Ministry of Commerce since 1988.[49]

Since, in practice, foreigners are able to avoid the abovementioned prerequisites by structuring the Thai nominee corporation, to enhance its enforcement Sections 36 and 37 mention the civil and criminal punishment for Thai people and foreigners who violate, assist or support the violation such as a fine, an imprisonment and 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.

ii. Telecommunications Business Act, B.E. 2544 (2001) of Thailand

The Telecommunications Business Act, B.E. 2544 (2001) used to have a 75% rule. The telecommunication license shall not be granted to a foreigner

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47 The Council of State rendered legal opinion nos. Nor Ror 0601/866 dated August 2, 1991 and 332/2535 April 1992 that the criteria for juristic person to be considered as foreigner have to consider from the actual capital. In other words, it has to explore into the foreign investment ratio of each juristic person and then calculate altogether. *See* Legal opinion of the Council of State no. 332/2535 April 1992, http://app-thca.krisdika.go.th/Naturesig/CheckSig?whichLaw=cmd&year=2535&lawPath=c2_0332_2535.

48 Choon Yin Sam, *Economic Nationalism in Singapore and Thailand,* 16 SOUTH E. ASIA RES. 433, 454 (2008).

49 Kittipong Urapipattanapong, *Amending Foreign Business Act: Moving Forward or Backward* PRACHACHART BUSINESS NEWS 49 (Jan.18, 2007).

under the law on foreign business. In case of juristic person, the share holding proportion of Thai national should not be less than 75% of its total capital and not less than three fourth of the total number of directors as well as the authorized persons shall be of Thai nationality.[50] However, in 2006, 3 days before the Shin-Temasek deal, the 75% rule was abandoned and replaced with the criteria under the FBA.[51] Hence, Thai companies with 49% of foreign shareholders could apply for a telecommunication license which was in line with the Horizontal Commitments of Thailand to WTO.

C. Application to the Shin Corporation of Thailand – Temasek Holdings of Singapore Business Deal

This part will examine the Thai laws on foreign investment which are applicable to the Shin Corporation of Thailand – Temasek Holdings of Singapore business deal in order to examine the legal loopholes as a result of inefficient laws.

Before the transaction occurred, there had been 39.02% foreign shareholders in Shin and this did not exceed the 49% limitation. Temasek aimed to buy 49.59% of shares from the Shinawatra family and relatives. It was, thus, necessary to restructure the corporation. The 49.59% of shares were split into 10.97% and 38.62% and purchased by Aspens Holdings and Cedar Holdings respectively. Aspens Holdings is a Singapore registered company so it is a foreigner under Section 4(2) of the FBA and its acquisition of a share means acquisition by a foreigner. Adding this 10.97% with 39.02% existing foreign shareholders equals to 49.99% foreign shareholders so Shin reaches its maximum limit to be considered as a Thai entity. The point then is whether Cedar Holdings is a Thai juristic person.

As depicted in the 2nd tier of the structure, Cedar Holdings has three shareholders: Cypress Holdings, Siam Commercial Bank and Kularb Kaew. Cypress Holdings, holding 49% shares in Cedar Holdings, is undoubtedly foreigner. Siam Commercial Bank, a Thai bank, holds 9.9% shares. Kularb Kaew has to be a Thai juristic person so Cedar Holdings cannot be deemed as

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50 Telecommunications Business Act, Thailand, B.E. 2544 (2001), §8.

51 Act Amending the Telecommunications Business Act, Thailand, B.E. 2543 (2006).

foreigner and make the entire transaction valid and legal. The fact is that 51% of Kularb Kaew's shares are held by Thai investors and the rest are held by foreigners, so it is a Thai juristic person. Had the Announcement No. 281 of the National Executive Council B.E. 2515 (1972) still been in force, Cedar Holdings and accordingly Shin would have been foreigners under Thai law. Fortunately, the FBA, the enforceable law at the time of transaction, renounces the capital criteria and instead, binds itself with the share criteria. So Kularb Kaew, Cedar Holdings and Shin are *de jure* all Thai.

In short, looking only at the nationality requirement, the transaction is legitimate under the FBA and the Telecommunications Business Act, B.E. 2544 (2001). The concession awarded to AIS, another Shin's subsidiary operating telecommunication service business, and SATTEL cannot be revoked due to this ground.

IV. LEGAL PROBLEMS BECAUSE OF THE TAKEOVER OF THE SATELLITE COMPANY FROM A SPACE LAW PERSPECTIVE

'Taking back Thai satellites… is a patriotic duty for every Thai', the Thai *junta* head said about a year after the transaction was done.[52] This statement shows the importance of satellites and its effect of national pride, particularly in a developing country. In contrast, the other side views this investment as a purely business decision.[53] Regardless of the intention of entry into this transaction, it was accomplished. Yet, what should be considered are its consequences, especially legal consequences. This part will focus only on international space law, beginning with the overview of satellite operation of Thailand and then evaluating the legal aspects. Due to the fact that the Department of Special Investigation has been investigating the case and whether Shin and Temasek breached the FBA or not, this article will analyze the outcome of two scenarios. First, the deal is legal and therefore, Shin is a Thai juristic person and second, that the deal is illegal and Shin is not a Thai juristic person.

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[52] *Duty of every Thai to see satellites returned*, THE NATION (Feb. 19, 2007), http://nationmultimedia.com/2007/02/19/headlines/headlines_30027229.php.

[53] *Thailand May Offer to Buy Shin Assets From Temasek*, BLOOMBERG (Feb. 19, 2007), http://www.bloomberg.com/apps/news?pid=20601080&sid=aXVXTFmjAKNs&refer=asia.

With regard to space law, Singapore and Thailand have become member states of the International Telecommunication Union (ITU) since 1965 and 1883 respectively.[54] As of 2010, Thailand has ratified two out of five outer space treaties, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (the Outer Space Treaty) and the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (the Rescue Agreement) while Singapore has also ratified these two treaties plus the Convention on International Liability for Damage Caused by Space Objects (the Liability Convention) as well as signed the Convention on Registration of Objects Launched into Outer Space (the Registration Convention).[55]

A. Geostationary Orbital Slots

Outer space is not subject to national appropriation, mentioned in Article III of the Outer Space Treaty.[56] Geostationary orbit, as part of outer space, has a special value owing to its constant position with respect to the Earth. The non-appropriation had been claimed to exclude geostationary orbit by the equatorial developing countries.[57] However, this claim is considered effectless[58] and the non-appropriation in outer space, including geostationary orbit, is considered customary law as well as treaty law.[59]

Applying this legal concept to this case, irrespective of Shin's and SATTEL's nationality, Thailand does not have an ownership in orbital slots.

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54 International Telecommunication Union, *Membership List*, http://www.itu.int/cgi-bin/htsh/mm/scripts/mm.list?_search=ITUstates&_languageid=1.

55 United Nations Treaties and Principles on Outer Space and Related General Assembly Resolutions Addendum – Status of International Agreements Relating to Activities in Outer Space, ST/SPACE/11/Rev.2/Add.3 (Jan. 1, 2010), http://www.oosa.unvienna.org/pdf/publication s/ST_SPACE_11_Rev2_Add3E.pdf.

56 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, Jan. 27, 1967, 610 U.N.T.S. 205 [hereinafter Outer Space Treaty], art. III.

57 Declaration of the First Meeting of Equatorial Countries (known as the Bogotá Declaration) (Dec. 3, 1976), reprinted in 6 J. SPACE L. 193 (1978).

58 *Supra* note 41, at 62.

59 *Supra* note 41, at 59.

Moreover, the Concession Agreement between MICT and Shin obviously mentions that the right bestowed by the MICT to Shin is the right to operate communication satellites and collect service fees for satellite transponder leasing. Nothing in the Concession Agreement relates to the transfer of orbital slots to Shin or the ownership of slots by the government.

In sum, under the concession condition, a right in the orbital slots belong to the MICT, that is, the state and not the private entity.[60] SATTEL is entitled to use them only to the extent provided under the term in the Concession Agreement.

B. Ownership of Satellite

The Build-Transfer-Operate concession had been elaborated in the Concession Agreement. It stated that the ownership of all satellites shall be the MICT's, after such satellites are launched into their orbital location.[61] This means, thus, that SATTEL does not own any satellite in the THAICOM fleet. It only has the right to operate communication satellites and collect service fees for satellite transponder leasing in return. Briefly, even though the shareholder structure in SATTEL's parent company changed, all of the satellites are still the assets of the state of Thailand.

C. Responsibility and Liability

Before beginning the discussion in detail, it is interesting to note that the Outer Space Treaty in its English text uses the terms 'responsibility' in Article VI and 'liability' in Article VII while the Treaty in other languages, which are equally authentic,[62] does not distinguish between the two. They use the equivalent term of 'responsibility' in both Articles. This inconsistency was questioned by Professor Stephen Gorove followed by the issue of whether international responsibility would entail liability in all situations.[61]

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60 Concession Agreement, *supra* note 39, § 11.

61 Concession Agreement, *supra* note 39, preamble ¶ 3, § 15.

62 Outer Space Treaty, *supra* note 56, art. XVII. In french, the same term *responsabilité* qualified as *responsabilité legale* is used, thus not differentiate in terminology. *See* Bin Cheng, *International Responsibility and Liability for Launch Activities*, *in* THE USE OF AIR AND OUTER SPACE: COOPERATION AND COMPETTION 159, 166 (Chia-Jui Cheng ed., 1998).

63 STEPHEN GOROVE, DEVELOPMENTS IN SPACE LAW: ISSUES AND POLICIES 227 (1st ed, 1991).

Nevertheless, in his article, Professor Bin Cheng examined the different regimes and the scope and meaning of international responsibility and liability with respect to launching activities.[64]

Responsibility in Article VI of the Outer Space Treaty and liability in Article VII are intertwined. Both responsibility and liability are placed in state entities and not any nongovernmental entity because of the intention to ensure that any outer space activity should be carried on in compliance with the international law.[65] Unlike the time when the Outer Space Treaty was drafted, nowadays, private entities increasingly participate in outer space activities. Their states bear international responsibility for activities carried by such private entities by licensing and continuing supervision.[66] Licensing is, hence, an *a priori* administrative step and continuing supervision is a later one.

The possibility that Shin is not a Thai juristic person indicates the weakness of continuing supervision of the State. International space law emphasizes the right or duty of a State to supervise private entities. Domestic law is the mechanism to make this system effective. Unfortunately, specific law on space law does not exist in Thailand and the Concession Agreement cannot be terminated unless the deal is violated by the FBA. In this case study, at least from the Thai side, until the share acquisition agreement had been signed, the public was unaware of the transaction. This questions the proper extent of the 'continuing supervision' concept.

Turning to liability, international space law binds liability with the concept of launching state and categorises 'launching states' into four categories i.e. State launching a space object, State procuring the launching of a space object, State from whose territory a space object is launched and State whose facility a space object is launched.[67] It is undeniable that Thailand is a launching state for every THAICOM satellite.

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64 BIN CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 201, 222, 223 (1st ed, 1953).

65 MANFRED LACHS, THE LAW OF OUTER SPACE: AN EXPERIENCE IN CONTEMPORARY LAW-MAKING 122 (1st ed, 1972).

66 Outer Space Treaty, *supra* note 56, art. VI.

67 Outer Space Treaty, *supra* note 56, art. VII; Convention on International Liability for Damage Caused by Space Objects, March 29, 1972, 961 U.N.T.S. 187, art. I (c),.

After the transfer of share in the Shin-Temasek deal, it is doubted whether the acquisition country perceives to be regarded as a launching state.[68] In contrast to Thailand, Singapore has not been involved in any launching, procuring the launching of any THAICOM satellites or offered its territory or facility for the launch of THAICOM satellites; therefore, Singapore is not a launching state under the current definition.

The concept of nongovernmental user's liability under international space law is that the government is directly liable.[69] Consequently, if there is any damage caused by THAICOM, Thailand, as a launching state, not Singapore, will be liable for compensation for the act of SATTEL of which a great number of shares ultimately are held by a foreign juristic person.

Steven Gorove also pointed out that in case the liability is not waived, the nongovernmental user would have to reimburse the government in the end.[70] Looking into the Concession Agreement, it clears the way by placing the entire responsibility of compensation on Shin in case of damage caused by satellites.[71] This clause also shows that SATTEL, under the control of Shin, a party in the Concession Agreement, is the actual controller of satellites. Hence if the Thai government pays any compensation for damage caused by THAICOM satellites, the governmenst can seek recourse from Shin under domestic law and procedure based on the Concession Agreement. Shin's repayment links to Temasek and eventually Temasek's investors. It is worth noting that even though this scenario places liability in the actual controller, the State has to recompense in advance.

Academically speaking, this deal raises concern on the change in status of ownership or control of a space object in case of non-governmental entity while international space law links liability with State or, to be more precise, launching state. In addition, where the State of nationality of the new operator is not the launching state, the transfer of liability between States is suspect.

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68 Committee on the Peaceful Uses of Outer Space, Legal Subcommittee, 748th Meeting, Unedited Transcript, COPUOS/LEGAL/T.748 6-7 (Mar. 26, 2007).

69 *Supra* note 63, at 228.

70 *Supra* note 63, at 228.

71 Concession Agreement, *supra* note 39, § 46.

D. Registration of Space Object and Jurisdiction and Control

Article VIII of the Outer Space Treaty elaborates on jurisdiction and control over space object of a state of registry. The term 'State of registry' was explained as a launching State on whose registry a space object is carried in accordance with article II.[72] Jurisdiction and control are connected with State, not with private entities.[73] Despite the fact that the owner of satellites is the Thai government, SATTEL is entitled to operate and control the satellites including its ground station. When Shin is under the control of Temasek, accordingly, it is doubted whether SATTEL is indirectly controlled by Temasek or not. If so, the jurisdiction and control of space object may be affected.

The importance of registration is not only for identification of space object but also for establishing responsibility, for ownership, for the exercise of control and for liability.[74] In practice, neither Singapore nor Thailand ratified the Registration Convention. Singapore signed but did not ratify the Convention. Since Thailand did not ratify the Convention, it is less possible that Thailand will furnish or register THAICOM satellites to the United Nations. According to the United Nations Office for Outer Space Affairs (UNOOSA)'s website, Thailand is mentioned in the section of the State of registry for all of the five THAICOM satellites although the information is in square brackets and highlighted in green which indicates that the information has not been officially submitted by Thailand.[75]

In case of transfer of in-orbit satellite, the registration must be changed as well. However, the Registration Convention narrows the eligibility of persons to register space object to the launching states.[76] There are a few

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72 Convention on the Registration of Objects Launched into Outer Space, Nov. 12, 1974, 1023 U.N.T.S. 15, art. 1 (c).

73 Bernhard Schmidt-Tedd & Michael Gerhard, *Registration of Space Objects: Which are the advantages for states resulting from registration?*, *in* SPACE LAW: CURRENT PROBLEMS AND PERSPECTIVES FOR FUTURE REGULATION 121, 125 (Marietta Benkö & Kai-Uwe Schrogl eds., 2005).

74 *Supra* note 41, at 84.

75 United Nations Office for Outer Space Affairs, Search Results, http://www.oosa.unvienna.org/oosa/search.do;jsessionid=6453F99374D1F29A78B46981C4D4B684.WEB02.

76 *Supra* note 72, arts. 1 and 2.

cases about transfer of in-orbit satellite which considered registration. For instance, four telecommunication satellites, registered by the United Kingdom, were transferred from the United Kingdom to China in 1997. This case does not generate any problem since China is also a launching state. The United Kingdom declared to the UNOOSA that it ceased to be the State of registry.[77] Correspondingly, the UNOOSA's website shows the state of registry of these four satellites as China (formerly UK).[78] Another one is the BSB-1A transfer from the United Kingdom to Sweden. The information submitted to the UNOOSA shows that states of registry are the United Kingdom and Sweden despite the fact that Sweden is not a launching state.[79] The other case is the transfer from INTELSAT to the Netherlands which is not the launching state. In this case, the Netherlands obviously show its status as not being the 'launching State', 'State of registry' or 'launching authority' but the Netherlands, according to Article VIII of the Outer Space Treaty, bears international responsibility and has jurisdiction and control after the transfer.[80] Accordingly, the UNOOSA made a remark about this fact and did not put the Netherlands in the state of registry.[81] Nevertheless, there has never been any claim about the liable State after the transfer.

These practices are not exactly the same as the Shin-Temasek case in which the satellites were not transferred but the control was. Provided that Shin is of Thai nationality, the green word of 'Thailand' in square brackets as a state of registry in the UNOOSA's website is uncontested. In the event that

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77 United Nations Office for Outer Space Affairs, Information Furnished in Conformity with the Convention on Registration of Objects Launched into Outer Space, ST/SG/SER.E/333, (April 3, 1998), http://www.oosa.unvienna.org/oosa/download.do?file_uid=416.

78 United Nations Office for Outer Space Affairs, Search Results, http://www.oosa.unvienna.org/oosa/search.do?cur=1&objectStatusCrit=&duplicateRegistrationCrit=&spacecraftCrit=&gsoActiveCrit=&nameOfSpaceObjectCrit=&unRegisteredCrit=&docNoIdxCrit=&sarConstellationCrit=&nrbitCrit=&docSeriesIdxCrit=&npsYesNoCrit=&stateOrganizationCrit=CN&dateOfLaunchCrit=&launcherCrit=&submit_btn=SEARCH&spacestationCrit=&internationalDesignatorCrit=&gsoYesNoCrit=&gpsConstellationCrit=&launchFacilityCrit=.

79 United Nations Office for Outer Space Affairs, Information Furnished in Conformity with the Convention on Registration of Objects Launched into Outer Space, ST/SG/SER.E/377, http://www.oosa.unvienna.org/oosa/download.do?file_uid=1493; Yoon Lee, *Registration of space objects: ESA member states' practice*, SPACE POL'Y 44, 47 (2006).

80 Yoon Lee, *id.*, at 48.

81 United Nations Office for Outer Space Affairs, U.N. G.A. Doc. A/AC.105/806 (Aug. 22, 2003); United Nations Office for Outer Space Affairs, U.N. G.A. Doc. A/AC.105/824 (March 16, 2004).

Shin is considered as a foreigner, the government has to check the legality and may lead to the termination of the Concession Agreement or may negotiate for other possible solutions. Nevertheless, in whatsoever case, Singapore, as mentioned earlier, is not the launching state under the international space law definition so it cannot be a state of registry.

However, a few academic questions arise. Can Thailand suspend or stop being considered as a state of registry during the said period? What are the outcomes of that notification? Will it cut the notifying State any connection to the notified space objects? Moreover, since the State which acquired the control of space objects is not the launching state, it cannot literally be eligible to be a state of registry.

V. CONCLUSION

The obligations and commitments of Thailand under the framework of GATS particularly in the basic telecommunications service sector have shown great commitment to foreign equity cap. These obligations and commitments were adapted and transformed into the national law, Foreign Business Act B.E. 2542 (1999) and Telecommunications Business Act B.E. 2544 (2001). However, regarding the gap and weakness of Thailand's domestic law resulting from the deal explained above, it has raised some considerations on nominee company and led to the proposal on revision of definition of 'foreigner' of the FBA. Without harming the principle of progressive liberalization propounded by the WTO, Thailand had an incentive to tackle this issue by revising the definition of "foreigner" of the FBA B.E. 2542 (1999). It is expected that the revision will bridge the legal gap relating the definition of 'foreign juristic person' under the FBA.

Regarding the criterion of share limitation to be considered as 'foreigner' for juristic person, the current FBA weighs on the ratio of shares held by foreigners which leads to the avoidance by setting up a nominee as exemplified by the case of the acquisition on Shin Corporation of Thailand; hence, the newly drafted definition of 'foreigner' is proposed by relying on the stricter criterion of the voting right besides the ratio of share holders and the registration in Thailand. In other words, if foreigners hold less than 49% of shares in a company and have more than half of voting rights, the company is

considered as "foreigner". Notably, the incentive to revise this law is in order to protect the reserved national business from the movement of nominee corporation. Despite the new draft being able to partially fill a loophole, there is still a leak because a foreigner can control the company by having a power to nominate directors regardless of voting rights. In particular, the operation of telecommunication service is highly related to national security. It should not permit foreign dominance through direct and indirect control or influence in setting a policy and engaging in management beyond that allowed by their share ownership. To prevent foreign dominance of local telecommunication business, this idea is similar to the recently drafted regulation proposed by the National Telecommunications Commission regarding the auction of 3G-2.1GHz spectrum licences.

Importantly, such acquisition has indicated great concerns in tackling threats in the international space law especially the state responsibility and liability from the space activity. From the space law point of view, the definition of 'launching state', which allows for four possible categories of States to be liable for damage caused by the launched space object; 1) the State which launches the space object, 2) the States which procures the launching, 3) the State where the launch takes place and 4) the State which owns the facility used in the launching,[82] fails to cover the case of nominee as previously explained.

Given the gradual development of space activities by developing countries in subsequent years, the ambiguous circumstance of the responsibility and liability regime particularly in the case of space activities operated by the nominee of foreigner juristic person should be taken into serious consideration. The interesting question is whether it is an essential point to amend and broaden the definition and scope of "launching state" as well.

It is apparent that the United Nations adopted the Resolution 59/115 on Application of the concept of the "launching State"[83] to encourage States to

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82 C.E.S. Horsford, *Legal Liability in Outer Space – the New Treaty*, 4(2) INT'L REL. 137, 138 (1972) cited by BRUCE A. HURWIZ in STATE LIABILITY FOR OUTER SPACE ACTIVITIES IN ACCORDANCE WITH THE 1972 CONVENTION ON INTERNATIONAL LIABILITY FOR DAMAGE CAUSED BY SPACE OBJECTS 22 (1992).

83 G.A. Res. 59/115, U.N. Doc. A/RES/59/115 (Dec. 10, 2004).

comply with international obligations on international space laws. Therefore, in relation to this case study only, States should implement national laws on the authorization and supervision of the activities in outer space of non-governmental entities under their jurisdiction. Further, it calls on States to voluntarily reveal information on the current practices regarding on-orbit transfer of ownership of space objects.

Although the preamble of this resolution bears in mind the term "launching state" as used in the Liability Convention and the Registration Convention is significant in international space law, it fails to clearly specify whether it covers the nominee case. As a result, as long as the problem of the acquisition of share by foreigner, specifically in commercial space business, has not been seriously solved, Thailand as a member of United Nations should go on strengthening its laws and regulations on supervision. Considering the disadvantage of the developing countries in terms of technological space innovation and a great need of capital in space investments and activities, it needs to be considered whether it is worthy to broaden the view of responsibility and liability regime to cover the State of nationality of the juristic person which has the actual control in the satellite business so that, at least, this liability regime can narrow the gap as well as balance the advantage and disadvantage between nations.

Table 1
Definition of Foreigner

General Agreement on Trade in Services (Article XXVIII (m) (n))	Announcement No. 281 of the National Executive Council (Section 3)	Announcement No. 281 of the National Executive Council (Amended in B.E. 2535 (1992) (Amended Section 3 (1))	Foreign Business Act B.E. 2542 (1999) (This Act repeals the Announcement No. 381 of the National Executive Council.) Section 4	Draft Foreign Business Act
(m) "juridical person of another Member" means a juridical person which is either: (i) constituted or otherwise organized under the law of that other Member, and is engaged in substantive business operations in the territory of that Member or any other Member; or (ii) in the case of the supply of a service through commercial presence, owned or controlled by: 1. natural persons of that Member; or 2. juridical persons of that other Member identified under subparagraph (i);	Foreigner means natural person and juristic person not of Thai nationality and including (1) Juristic person of which half or more capital are belong to foreigner (2) Juristic person having half or more of the juristic person's capital shares held by foreigner or having half or more foreigners as a shareholders regardless how much such foreigners invest (3) Limited partnership or registered ordinary partnership having the managing partner or manager as foreigner	(1) Juristic person of which half or more registered capital are belong to foreigner or juristic person having foreigner or juristic person investing in shares with a value of half or more of the total capital of the juristic person.	"Foreigner" means (1) Natural person not of Thai nationality. (2) Juristic person not registered in Thailand. (3) Juristic person registered in Thailand 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. (b) Limited partnership or registered ordinary partner-ship having the person under (1) as the	"Foreigner" means (1) Natural person not of Thai nationality. (2) Juristic person not registered in Thailand. (3) Juristic person registered in Thailand 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 juristic person having persons under (1) or (2) having authority under the law or article of association or agreement

(n) a juridical person is: (i) "owned" by persons of a Member if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Member; (ii) "controlled" by persons of a Member if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; (iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;			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.	on voting right to have half or more of voting right of the total voting right of the juristic person. (b) Limited partnership or registered ordinary partner-ship 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 or juristic person having persons under (1) or (2) having authority under the law or article of association or agreement on voting right to have half or more of voting right of the total voting right of the juristic person.