

Starting a Restaurant in Thailand?

A Guide for New Entrepreneurs!

In any world ranking of people's favorite food, Italian food always makes one of the top ten. So, it is not surprising that we see many Italian restaurants in Thailand. If you are thinking of setting up a restaurant in Thailand, here are a few legal issues of which you should be aware.

Entity Selection

There are many forms of business organizations we can choose from – sole proprietorship, unregistered partnership, registered partnership, limited partnership or private limited company. The most popular form of business organization is limited company because the owner's personal assets are not exposed. The company's liabilities are also limited to the company's registered capital.

Governmental Agency and Governing Law

The Department of Business Development ("DBD"), Ministry of Commerce, is the main governmental agency responsible for the registration of new companies and any changes relating to the company, such as the change of directors or shareholders or the change of the directors' signing authority. The law concerning company formation and operation is the Civil and Commercial Code ("CCC").

Setting Up a Company

Under the CCC, at least 3 individuals called "promoters" are required to initiate the formation of a private limited company. The promoters will later become the newly formed company's shareholders.

One of the promoters should apply for a name reservation with the DBD. The DBD considers whether the contemplated company name is identical to or is closely similar with those of existing registered companies. If not, the promoter could proceed with further steps of company incorporation.

The promoters then register the Memorandum of Association ("MOA") with the DBD within 30 days. The MOA includes the company's name, capital to be registered, names of three promoters, province in which the company is to be located and business objectives. The registration fee is 0.05% of the registered capital with a minimum fee of Baht 500 and a maximum fee of Baht 25,000.

Once the MOA is registered, the promoters call a meeting of share subscribers called the "Statutory Meeting." At this meeting, the company's Articles of Association ("AOA"), the list of shareholders, shareholding proportion and expenses incurred and/or advanced by the promoters in the company formation, nature of the company's shares and the initial payment of the company shares are submitted for approval. The meeting also elects the

company's directors and auditor.

The Board of Directors must call for payment of company shares. Thai law requires that all shares must be issued and at least 25% paid-up.

Once initial payments for the shares are made, the promoters must submit the incorporation application at the DBD within 3 months from the date of the Statutory Meeting. The application registration fee is 0.5% of the registered capital with a minimum fee of Baht 5,000 and a maximum fee of Baht 250,000.

It takes only one day for the DBD to consider and approve the filed documents. Once complete, a Certificate of Incorporation as well as other certified corporate registration documents, i.e. Affidavit, MOA, AOA, list of shareholders will be issued by the DBD Registrar within the same date the incorporation application is filed.

To further facilitate business operation, you can now register the MOA and incorporation application on the same day provided that all conditions in the CCC are met.

Foreign Shareholder Permitted?

The law that governs a foreigner or foreign company doing business in Thailand is the Foreign Business Act B.E. 2542 (1999) ("FBA"). Restaurant business falls under the list of restricted businesses under the FBA which shall not allow foreign majority own company to operate this business unless a Foreign Business License ("FBL") is obtained prior to the operation of the business. In general, restaurant business will not be granted the FBL considering its activities do not meet the criteria under the FBA e.g., technology transfer, size of investment, research and development etc. and Thai people are not ready to compete in this business. Therefore, restaurant operator chooses to set up a Thai-majority owned company with at least 51% Thai shareholders for operation of restaurant business in Thailand. In this case, the FBL shall not apply and a Thai-majority owned company can operate the business right away subject to specific licenses required for a restaurant mentioned below.

Thai law limits foreign shareholding in a company that operates restaurant business to not more than 49%. However, even if the company is Thai-majority owned, where a foreigner owns minority of the shares or is a director of the company, all Thai shareholders are required to show a form of financial documents demonstrating that they have the ability to pay for the shares. This is to prevent the nominee arrangement in a Thai company under the DBD's regulation.

Now that we have the company set up, what do you need to run the company?

VAT Registration

The company operating a restaurant may or may not require a VAT registration with the Revenue Department ("RD") – depending on its income. If the company's income does not exceed Baht 1.8 million, the company may elect not to register VAT with the RD. But if its income exceeds such amount, VAT registration is required.

Selling Alcohol?

A full Italian course seems incomplete without Italian wine. A restaurant that sells wine or other alcohol requires a license to sell alcohol from the Excise Department under the Alcohol Act B.E. 2493 (1950).

License to Operate Restricted Commercial Undertakings

Assuming the restaurant is located in Bangkok Metropolis, since a restaurant is considered one of the restricted commercial undertakings under the Bangkok Metropolis Regulation, the restaurant also needs to obtain a license to operate restricted commercial undertakings from the Bangkok Governor. If the restaurant is located outside of Bangkok, the restaurant would need to comply with the local regulations.

Cleanliness and Drainage

The Public Health Act B.E. 2535 (1992) and the Bangkok Metropolis Regulation go into details on the restaurant drainage system, walls, sinks, kitchenware and dinnerware as well as dining tables and chairs. But to sum it all up, the restaurant is required to be kept clean, have good drainage system and sufficient sinks and toilets.

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