

Beat: Business

## Foundations of Business in Thailand

### Business in Asia

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**USPA NEWS** - The foundation of a successful business needs careful consideration. Thailand, especially is a booming economy based in the heart of the Asia-Pacific region. Being the hub of the region and a gateway to Asia, Thailand offers the potential to a huge market place.

### Starting a business in Thailand

The Kingdom of Thailand is an interesting location for foreign companies due to its location and attractive investment conditions. The economy has remained stable for investors despite internal political disputes most recently in 2010 which led to unrest in the capital city of Bangkok for a short period of time. Despite this, the Thai baht has remained stable in comparison to the euro and the country has one of the strongest growing economies within the Asia-Pacific region.

The system of the country is based on democracy with a domestic market of over 67 million consumers and has a strategic position in regards to the opening up of markets within the Asia-Pacific (ASEAN) region, with the potential of more than 500 million customers. Since 2010 the 6 ASEAN states Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand have removed nearly all customs duties and other trade barriers between the neighboring states.

Thailand has also been negotiating an extensive free trade agreement with the EU since March 2013 to remove customs duties and non tariff trade barriers for goods and services including investments, public procurement, competition and sustainable development. Thai corporate law is based on the legal forms found in Germany and as a joint stock company Thai law recognises the private limited company, the public limited company and as business partnerships the unregistered ordinary partnership, the registered ordinary partnership and the limited partnership.

### Private Limited Company (Co., Ltd.)

The most popular choice of business is the Co., Ltd., a joint stock company as it can open contracts, have accounts, own property, acquire rights, and be a party to legal proceedings in its own right. Personal liability of its shareholders only exists to the extent of their share of the capital paid in and is limited to the unpaid amount and the personal liability for financial obligations of the company are excluded. The company acts as a legal entity through its managing director and shareholders.

The business is managed by one or more managing directors, who also represent the company externally and has to be founded by at least three native people known as promoters, who respectively sign for one share each. Three shareholders must also always hold shares but can be added at a later date after the founding phase, a company with only one shareholder is not possible. The registration process begins with the reservation of a company name and the submission of the foundation document with the ministry of commerce.

The foundation document defines the company, the address of the company in Thailand, the distribution of the company shares, the amount of the share capital and the exact company purpose.

Although, a minimum share capital is not required by law, at the registration stage there are checks to see there is sufficient and appropriate funding for the intended economic activity. This also applies with the application for investment grants, special business licences or work permits for foreigners.

### Public Limited Company (PLC)

The PLC is designed for a wider distribution of shares and the transactions of the company are managed by executive board members which must consist of at least five native people. Of these, at least half of the executive board members must be resident in Thailand but they do not need to be shareholders of the company. The executive board members represent the company internally and externally.

The founding of the PLC must also be made by 15 native people, shareholders, of which half must be resident in the Kingdom and who subscribe to at least 5% of the capital. The company must always have at least 15 shareholders but if the correct legal conditions are met, the PLC can be listed on the stock exchange. The company acquires legal relevance with the conclusion of the registration process.

Compared to the Co., Ltd., it should be noted that there are increased requirements in regards to its financial accounting.

### **Business Partnerships - Ordinary Partnership**

In an ordinary partnership at least two native people have a contract to achieve goals and make contributions to the partnership in the form of money, non-cash benefits or services. Unless otherwise defined in the articles of association, all the contributions are deemed in principle to be equal. The company purpose is not subject to any further legal requirements and also for the founding there are hardly any formalities or obligations regarding disclosure. The need for a registration is also not required. Only articles of association is required, but the scope and content is left to the partners.

As a result the articles of association already exist when the partners mutually agree to take up the business activity, without the fixing of details beforehand in writing.

The ordinary partnership is treated by the tax system as a unit. As a union of people it is subject to its own form of income tax which is modified with regard to the possibilities of deduction, but is not subject to corporation tax. Under company law, the ordinary partnership, as a basic form of business partnership is a legal personality which is not different to its shareholders. Therefore, all partners assume unlimited liability as joint debtors with their personal assets for company debts.

### **Registered Ordinary Partnership**

The legal form of an existing ordinary partnership can be changed through registration. As a legal entity it can be a party of a contract or legal dispute under its own name. It is therefore seen as separate from its partners and a legally independent unit. The company management and external shareholders do not change the situation as defined by the non-registered ordinary partnership but the registration has an effect on the liability for company obligations.

Although the partners continue to be subject to joint personal unlimited liability, the liability, in contrast to the ordinary partnership, is not primary. In fact there is only likely to be recourse to the partners if the company is in default.

### **Limited Partnership**

The limited partnership is a separate legal identity from its shareholders and acquires this status through registration. The personal liability of shareholders can be limited to the amount of their contribution to the share capital, but at least one shareholder must remain with unlimited liability.

The company management is exclusively reserved for shareholders with unlimited liability. However, if a shareholder with limited liability participates in the company management, he loses his privilege of limited liability and his status changes to that of a shareholder with unlimited personal liability.

## **Joint Ventures**

According to the Thai Foreign Business Act (FBA), legal entities are considered to be foreign if at least half of the company capital is held by foreigners and no promotion through the Board of Investment (BOI) can be achieved or sought.

A company formed with a 51% Thai interest is usually chosen in order to ensure that the company is assessed to be a domestic company and is not subject to restrictions. If the foreign partner is to control the company, a preferential participation with differently weighted voting rights can be agreed.

## **Liquidation of The Company**

The PLC is dissolved through the attainment of the company purpose, after a period which is fixed in the contract, through the determination of bankruptcy or through a corresponding shareholders' resolution. Liquidation can be ordered by the court if the registration authorities in formal proceedings cannot establish business activity of the company or the number of shareholders is below the legal minimum of three shareholders.

The public limited company is dissolved through a corresponding shareholders' resolution, a court order or the opening of insolvency proceedings in the same way as the private limited company and able to act for the duration of the liquidation phase under the control of a liquidator.

The ordinary partnership is dissolved if the agreed duration or the company purpose is reached, a corresponding court order is served, ordinary notice of termination, a legal incapacity, insolvency or death of a partner.

Regarding the liquidation of a registered ordinary partnership and of a limited partnership, the same applies as was already described for the ordinary partnership.

## **Real Estate and Acquisition of Land**

According to Thai law, it is not possible for foreigners to own property in Thailand. There are, however, a number of exceptions to this principle. For example, for foreign natural people there is the possibility in connection with an investment in Thailand to acquire property for residential purposes and under certain conditions, foreign companies can also acquire land. If a company is founded on an industrial estate or investment funds are granted by the board of investment, it is not possible to own land for the location of the enterprise.

## **Labour Law and Dismissal Protection**

The Thai labour market is able to provide an adequate range of workers in all industries and fields including technical and management personnel. According to the regulations of the labour code, the regular working time may not exceed 8 hours per day and 48 hours per week. In addition to Thai public holidays, the employee is released from the duty of working one day in a week.

The claim to holidays for the purpose of recuperation depends on the duration of company service, but amounts to at least 6 days per year. Overtime hours on normal working days are remunerated with a factor of 1.5 times the normal wage, working on public holidays with a factor of 2 and overtime hours on public holidays with a factor of 3.

The taking on of employees who are not Thai nationals in principle depends on the issue of a work permit. The applicant must be in possession of a non-immigrant visa or of an unlimited residence permit. A decisive criterion for the issue of work permits is the capital resources of the company. According to the current reference values, for each issued work permit a capital amount of two million baht is required.

The relationship of foreign to Thai employees in companies should be at least 1 to 4. This is only a minimum requirement in addition to which depending on the industry and circumstances of the individual case further conditions will have to be fulfilled. The notice of termination of an employment contract must be made in the written form and a notice period of at least one month complied with relating to the next salary payment.

The minimum amount for a settlement payment is determined by Thai labour law depending on the duration of the employment, whereby:

“<sup>o</sup> for a minimum of 120 days the payment is 30 days' pay,

“<sup>o</sup> for at least one year 90 days' pay,

“<sup>o</sup> for at least three years 180 days' pay,

“<sup>o</sup> for at least six years 240 days' pay,

“<sup>o</sup> for at least ten years 300 days' pay.

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