

Opening a Restaurant or Bar in Thailand

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All foreigners come to Thailand with a dream. For some, the vision of owning and running a restaurant or bar in this exotic corner of the world is irresistible.

For those with a Thai partner, the reality is often that the ownership of the business is held in the name of the Thai. If you have friends who have bars or restaurants, you know that this is what the vast majority of foreigners end up doing. Of course, putting everything in the name of the Thai has two distinct drawbacks. If the restaurant succeeds and the relationship doesn't, it is the Thai who owns everything. Also, without a work permit the foreign partner isn't supposed to work there and runs the risk of arrest and even deportation if the local labor authorities get wind of this.

But what if you really want to be an owner of what you create or don't want the risks mentioned above? What are the practicalities?

Every restaurant or bar that sells food must have the following permits:

- A commercial registration certificate from the provincial registration office for the sale of goods and provision of musical and karaoke service (the fee is up to 100 baht).
- A permit to use, sell, cook and keep foods and/or ice in a particular place from the environmental and public health division of the local municipality office (the fee is up to 1,000 baht).
- A permit to operate a business dangerous to health (if liquor is sold) from the environmental and public health division of the local municipality office (the fee is approximately 1,000 baht and depends on the type of food sold and the size of the establishment).
- A permit to open a service establishment (selling food, liquor and providing music, karaoke or other entertainment) from the local sheriff's office (the fee is 50,000 baht).

- If applicable, a permit to open an entertainment establishment (to show videos, movies and the like) from the local sheriff's office (the fee is up to 100 baht).

- A permit to sell liquor from the local excise office (the fee varies from 50 to 10,000 baht, depending on the amount of sales).

- A permit to sell cigarettes from the local excise office (the fee is up to 100 baht).

The law provides that the permit to open a service establishment must be decided upon within 60 days, but it often takes longer because of requests from the officer in charge for further documentation. Also, this officer must visit the establishment. For the other permits, which are easier to get, all can be obtained within 90 days.

Now to the requirements for foreigners. Under normal circumstances, you would be required to make any foreign investment by getting a foreign business license from the Ministry of Commerce (MOC). The MOC, however, has an internal policy against granting these licenses for bars or restaurants, because the decision has been made to reserve this opportunity for Thais.

There is one exception to the limitation on foreigners investing through the MOC in a bar or restaurant. US citizens, because of the treaty of Amity between the US and Thailand, can apply for a foreign business certificate, certifying their nationality. This certification is practically automatic. They can then invest in a bar or restaurant and own 99.9 percent of it. And it gets even better. Normally, the minimum capital the foreigner must invest is the greater of 25% the foreigner must



invest is the greater of 25% of three years' estimated expenses of the business or three million baht. This must be remitted to Thailand after the certificate has been granted, through the Bank of Thailand. Until July 14, 2009, however, US citizens have no such investment limit. After this date, if you are a US citizen, you will have to raise the investment to this minimum level, but you see the advantage you are being offered here—you can get the business up and running now and put in most of the money later. Of course you have to put in something to start up your business, but restaurants or bars are routinely opened by Thais on a shoestring. You have the unique opportunity to do this, too. If you want to work in your restaurant or bar, though, the capital and expertise requirements mentioned below for the work permit still apply.

What about everybody else? The requirement of a foreign business license through the MOC (which you can't get for a bar or restaurant) only applies to a "foreign" company. First, a Thai limited company is not considered foreign if less than half of the shares are owned by foreigners. Likewise, a limited or registered ordinary Thai partnership is not considered foreign if the manager or managing director is Thai. Thus you can own a minority of such a company and use it as the operating vehicle for a restaurant or bar, and none of the limitations in connection with the MOC mentioned above apply. You aren't supposed to work there, though, without a work permit.

Okay, let's get down to the work permit issue. There are four criteria we should discuss. First, to get a work permit, you must bring some expertise to the table, arguably something in short supply in Thailand. Experience as a chef would do this. Likewise, significant experience as a manager of a bar or restaurant outside of Thailand will be taken seriously. Second, the employer must have two million baht of capitalization for each work permit the company applies for. Third, some local employment offices, that of Prachubkirikhun, for example, require at least four Thais to be employed in the business for each work permit to be granted. Fourth, the foreign employee must obtain a "non-B" visa from a Thai embassy outside Thailand to obtain a work permit. The period of validity of the initial work permit will equal to the validity of the non B visa, usually up to 3 months. In case you wish to have a one-year visa to start, the company has to apply for this from an immigration office. Once you have the work permit and are in the country with your initial visa, an immigration office will grant a one-year visa, provided that the company supplies additional documents, including the audited balance sheet showing that the company has sufficient profits to pay its employees. If the balance sheet shows a loss, the visa may not be granted. You may then have to leave Thailand to obtain yet another non-B visa before the old one expires and then return to Thailand, again renewing the work permit, and repeating this process until the immigration office is satisfied the company has sufficient profits.

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