



Expat Counsel



OPENING A RESTAURANT OR BAR IN THAILAND II: Can foreigners do this?

Earlier we talked about the requirements for opening a bar or restaurant in Thailand that apply to everybody — both Thai and expat. Now to the rules that apply only to foreigners.

The overall principle is that a foreigner may engage in business in Thailand if he or she obtains a Foreign Business Licence (FBL) from the Commerce Ministry prior to commencement of the business. The ministry, however, has a general internal policy against granting these licences for bars or restaurants, because the decision has been made to reserve this industry for Thais.

The exception to the rule of not awarding FBLs for bars or restaurants is if you can prove you will invest heavily in the bar or restaurant and/or you will employ a number of Thai staff and/or you have technology that can be transferred to the Thai employees. An example of this kind of an exception would be a foreigner who wants to open a large restaurant in a major hotel,

with a famous chef and scores of waiters, kitchen staff, bartenders and the like. Even if this is the case, however, whether or not the FBL is granted is at the discretion of the ministry.

There is one exception to the limitation on foreigners directly owning bars or restaurants. 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 that is 100% foreign owned.

And it gets even better under the Treaty of Amity. Normally, the minimum capital the foreigner must invest is 25% of three years' estimated expenses of the business or three million baht, whichever is greatest. The foreign currency must be remitted to Thailand after the foreign business certificate has been obtained through a commercial bank in 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 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, even if you do it under the Treaty of Amity, but restaurants and bars are routinely opened by Thais on a shoestring. You have the unique opportunity to do this, too.

WHAT ABOUT EVERYBODY ELSE?

Well, there's always the exception mentioned above for the big-time investor. But what if you don't fall in this category? Here's how it's done. The requirement of getting an FBL through the Commerce Ministry only applies to a "foreigner".

Under the Foreign Business Act, a company is not considered foreign if less than half of its shares are owned by foreigners and real Thai investors hold the majority.

Likewise, a limited or registered ordinary Thai partnership is not considered foreign if the manager or managing partner is a Thai.

Because of the above legal considerations, you can own a minority of a company and use it as the operating vehicle for a restaurant or bar, and none of the limitations in connection with the Commerce Ministry mentioned here apply. The majority owner, in addition to being Thai, could be a US citizen, provided that the foreign business certificate is obtained.

Even if you are an equity owner, though, you aren't supposed to work there without a work permit. We'll discuss this next time. ■

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