


 Expat Counsel

## OPENING A RESTAURANT OR BAR IN THAILAND III: Work permits and leases

If you want to manage, cook for or otherwise operate a bar or restaurant in Thailand, you'll need a work permit.

The conventional wisdom floating around is that if a foreign owner doesn't go into the kitchen during opening hours, he or she can run the restaurant without a work permit.

If you're running it, it doesn't matter where you sit: What you do will be regarded as "work" if you are signing documents on behalf of the business, presenting yourself to others as a manager or do anything else, like supervising employees, that gives the impression you are working there.

If a labour inspector picks up on this, you may be subject to a fine and even imprisonment.

There are four criteria for getting a work permit 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 would be taken seriously.

**SECOND**, the employer must have two

million baht in capital for each work permit the company applies for.

**THIRD**, some local employment offices — for example, Prachuap Khiri Khan — require at least four Thais to be employed in the business for each work permit granted.

**FOURTH**, the foreign employee must obtain a Non-immigrant B visa from a Thai embassy to obtain a work permit. The period of validity of the initial work permit will be equal to the validity of the Non-immigrant B visa, usually up to three months. Should 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-immigrant 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.

Now let's talk about the lease for your business. You should have a professional check to make sure the person who is offering you the location is in fact the owner, or at least it is the owner who will sign the lease as your landlord. Often relatives or friends of owners sign leases and then, particularly if the landlord's family decides they don't want the tenant, it turns out the apparent landlord had no power to sign.

Under Thai law, no lease of more than three years is enforceable unless it is registered at the government land office. Landlords are often reluctant to allow this registration because it has the effect of engraving everything in stone; if this is done there's no room to negotiate any changes down the road and pretty hard to get a tenant out.

The disadvantage of signing a lease for less than three years is that you may put capital into the location that has value far beyond this period. If successful the location may have goodwill — an established customer base. Goodwill can last long after the term of a three-year lease. Sometimes landlords try to open similar or identical businesses to those of terminated tenants

in the same location. And it is pretty hard to compete with someone using your old location, decor and maybe even your staff.

On a related subject, it is a good idea to register the service mark of your bar or restaurant — so a landlord can't take that, too. The lease should also include a provision that the landlord won't use the name for his or her own businesses. If the landlord absolutely refuses to register the lease, you may discuss with your adviser an option to renew and whether this is adequate to protect you beyond the three years.

If the landlord does accept registration, this should not be just a hand-written notation of the lease in the land title file at the land office. Instead, an original of the lease should be filed at the land office in both Thai and English. Without this, none of the protections agreed to in the lease will be enforceable beyond three years. ■

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