


 Expat Counsel

By James Finch and Nilobon Tangprasit



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OWNING A HOTEL OR GUEST HOUSE IN THAILAND

Part I: Can a foreigner do it?

Imagine yourself arriving at the office on a morning in winter, somewhere in the north of Europe. Everything's steely grey, and your toes are wet from the melting ice on your shoes. And at 8am, it's still dark.

So you start to dream about a future in Thailand.

What so many foreigners dream about, when they think about a better life in Thailand, is owning a hotel or guesthouse, perhaps near a beach. In this series we will show you what you must do to make this dream a reality.

We're going to refer to guest houses, bed and breakfasts and hotels all as hotels, because they all fall under the same basic rules. You should know, however, that the regulations discussed below divide hotels into four categories, and before opening one you should be sure you have complied with the requirements of the category into which your hotel falls.

Lets start with the threshold issues — licensing and nationality. The Hotel Act BE 2547 (2004) require a hotel to have a

licence if it has more than four guest rooms and can accommodate more than 20 guests. This means, for example, that if a hotel has 10 guest rooms and these guest rooms are designed to accommodate up to 20 people, it doesn't need a hotel licence.

Any small hotel will have to inform an officer at the service centre of the Department of Local Administration, however, that it is operating a hotel business without a licence because of an exemption.

And here's the bad news. As a foreigner, you will not receive official approval to operate a hotel, whether it needs a licence or not.

Here's why. There's nothing in the Hotel Act stating that foreigners can't have a hotel licence. And, as mentioned above, a small hotel doesn't even need a hotel licence. But the hotel business is subject to the Foreign Business Act BE 2542 (1993) and a foreigner wanting to operate a hotel of any size would also have to have a licence from the Department of Business Development, in charge of licences under the Foreign Business Act.

In a nutshell, the Foreign Business Act in its appendices has included the hotel business as an activity that Thai nationals are not yet ready to compete with foreigners, and from which foreigners are thus prohibited to be licensed.

We recently checked with an officer at the Department of Business Development who confirmed that no licences would be granted to individual foreigners for hotels.

So what are your options? The first is that you operate without the requisite licences or notifications. If you do, and are caught, you will be exposed to possible penalties of up to one year in jail and/or a fine of 20,000 baht, plus a maximum fine of 10,000 baht a day for the period you've been in violation of the Hotel Act. In addition, you will also be subject to a fine of up to one million baht and/or up to three years in jail under the Foreign Business Act.

If you operate under the radar you will not have any way to pay any taxes. For non-payment of income tax you will be liable for 200% of the amount unpaid plus

1.5% of this amount as a monthly surcharge. You will be exposed to a fine of up to 5,000 baht and/or a six month jail term for not filing a tax return.

If the operation has a yearly income of 1.8 million baht or more you are supposed to register to withhold and pay value added tax (VAT) on the hotel's income.

For not registering you would be liable to pay a fine up to 5,000 baht and/or a jail term of up to a month. For not paying the VAT as it became due, you would be subject to an additional fine of twice the amount due.

There are more viable options on how your hotel can be owned, and we'll discuss these over the next couple of weeks. ■

James Finch of Chavalit Finch and Partners (finch@chavalitfinchlaw.com) and Nilobon Tangprasit of Siam City Law Offices Ltd (nilobon@siamcitylaw.com).

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