



How to Set Up a Private Limited Company in Thailand?

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The Private Limited Company is the most commonly used legal structure for doing business in Thailand. A foreign investor wishing to start a business in Thailand will usually start by incorporating a company.

The nature and form of a limited liability company in Thailand is similar to the ones from western countries. The liability of each shareholder is limited to the unpaid portion of the shares held and the company is managed by a board of director.

The difficulty for foreigners wishing to set up a company in Thailand lies in the restrictions on foreign ownership Thai law imposes in numerous business activities. The incorporation process in itself does not distinguish between Thai companies and foreign owned companies, and, both are governed by the Civil and Commercial Code. However, special legislations, such as the Foreign Business Act, prohibit or limit foreign owned companies to carry out certain business activities. Also, additional requirements such as the Foreign Business License or minimum capital may apply to foreign owned companies.

The following article focuses on the incorporation of a company in Thailand and highlights some of the elements that foreign investors have to take into account. It is divided into two parts: Basic requirements to set up a company and the registration process.

1. Basics requirement to set up a Private Limited Company in Thailand

1.1 The Promoters

At least three promoters are required to register a Private Limited Company (the "Company") with the Ministry of Commerce^[1]. The promoters must be individuals (not juristic persons) that hold a minimum of one share in the company upon registration^[2].

The promoters can be foreigners and do not need to reside in Thailand, but they must be available to sign the documentations during the registration process. Once the company has been registered, the promoters are free to transfer their shares to any person (natural or juristic entity). Indeed, the promoters must be natural person but after the company is registered, any business entity can be a shareholder.

The promoters are jointly and unlimitedly liable for paying all expenses associated with setting up

the company. If the company is never registered, promoters will remain liable for these expenses. The promoters may be reimbursed if such a provision has been approved during the Statutory Meeting^[3].

1.2 Timing

The process to incorporate a company has been sped up since 2008 with the introduction of the Section 1111/1 in the Civil and Commercial Code (“CCC”). This provision allows to fill the Memorandum of Association and to register the Company on the same day when:

- (1) All shares to be registered have been subscribed;
- (2) The statutory meeting has been held according to Section 8 of the CCC;
- (3) Promoters have handed over the business to the director; and
- (4) Future shareholders have paid at least 25% of the registered capital

In practice, the creation of a company usually takes between two to six weeks depending on the diligence of the promoters and the type of intended business activities.

Additional Delays for Foreign Owned Companies

As stated earlier, the incorporation process for foreign owned companies and Thai companies are the same. However, foreign owned companies may be required to obtain special authorizations prior to commencing operation.

Under the Foreign Business Act (“FBA”), a company is deemed a “foreign” company^[4] when more than 50% of the share capital is owned by foreigners (individual or juristic entities). The FBA, especially, but not exclusively, prohibits foreign companies to engage in a wide range of business activities unless a Foreign Business Licence (“FBL”) has been granted.

The process to obtain an FBL is time consuming and requires approval from the Cabinet or from the Commercial Registration Department of the Ministry of Commerce, depending on the intended activity.

Also, foreign owned companies may apply for promotions from the Board of Investment to get incentives when investing in an activity which is deemed important in the development of Thailand.

These red tapes are causes of the major longer process for foreign owned companies wishing to operate in Thailand.

1.3 Filings

All documents pertaining to the company's registration must be submitted to the registrar of the Department of Business Development of the Ministry of Commerce in Bangkok. If the office of the company is not in Bangkok, these documents must be submitted to the filling office of the province where the office will be located.

2. The Registration Process

The process of registering a company can be divided into 4 steps.

| Step | Formalities | Time |
|------|------------------------------------|--|
| 1 | Corporate Name Reservation | Name reserved for 30 days |
| 2 | Filing of the Memorandum | Can be done the same day |
| 3 | Statutory Meeting | |
| 4 | Registration of the Company | 3 months maximum after the filing of the Memorandum of Association |

2.1 Reservation of the Corporate Name

The first step is to reserve a name for the company at the Department of Business Development of the MOC. The name cannot be identical or too similar to any pre-existing partnership or company name. Existing registered corporate names can be found online at http://www.dbd.go.th/corpsearch_test/main.phtml. The name must end with the word "Limited", and certain terms are prohibited (notably the ones referring to Thai monarchy).

Promoters are advised to come with a first choice and two alternative back-up names. This is so that in the event the first name is rejected for any of the reasons stated above, the registration process will not be delayed. If the chosen name is in English, the registered name will be the Thai phonetic translation of it.

Once the name is approved, the corporate name reservation is valid for 30 days with no extensions. As a consequence, promoters are granted an implicit delay of 30 days to finish the registration process of the company.

2.2 Filing a Memorandum of Association

2.2.1 Content of the Memorandum of the Association

The second step is to file the Memorandum of Association (MOA). The MOA is the agreement made by the founders of the company and must contain the following information. Failing to include the following would invalidate the registration process^[5].

1. The name of the proposed company, which must always end with the word « Limited »;
2. The part of the Kingdom where the registered office of the company shall be situated;
3. The objective of the company;
4. A declaration stating the liability of shareholders shall be limited;

5. The amount of share capital with which the company proposed to registered, and the division thereof into shares of a fixed amount;
6. The names, addresses, occupations and signatures of promoters and the number of shares subscribed to by each of them.

The MOA must be made in at least two original copies and signed by the promoters as well by two witnesses[6]. The promoters are required to pay an official fee calculated on the basis of the registered capital with the filing of the MOA. The fee is 50 baht for every 100,000 baht of the company's intended capital and is capped at 25,000 baht.

2.2.2 Minimum Capital

There is no minimum capital requirement to register a company in Thailand. The CCC only states that the minimum value of a share shall not be less than five[7] baht and that a company must have a least 3 shareholders. Moreover, only 25% of the registered capital has to be released to incorporate a company[8]. If a company can theoretically be incorporated with less than four baht, however, in actual practice, the capital must be adequate for the intended business activity.

Certain laws require a minimum capital for specific activities, such as banking, telecommunication and insurance. Foreign owned companies have to comply with the requirements of the FBA, which sets up a minimum capital requirement to start any business activity[9].

| Minimum Capital Requirement for Foreign Owned Companies | |
|---|--|
| The capital has to be fully paid up for each business activity . In the case a foreign owned company wants to engage in two controlled activities, such as retail and service, the minimum capital required is the sum of the minimum capital requirements for each activity. There are also special capital requirements in the process of bringing capital to Thailand[10]. | |
| Business Activity | Minimum Capital Requirement (in Baht) |
| Business Activity that is not restricted by any law. Most importantly, the capital of a company has an impact on the hiring of foreign employees[11]. Under the Alien Working Act B.E. 2551 (2008), foreigners are prohibited from engaging in work in Thailand unless a work permit has been issued by the Department of Employment under the Ministry of Labor. | 2 million The greater of: |
| Business Activity controlled by List 2 or 3 of the FBA. Among numerous conditions of receiving a work permit, Thai law requires the hiring company to have a least 2 million of capital per foreign employee. This amount is decreased to 1 million baht if the foreign employee is married to a Thai national[12]. | • 3 million; or • 25% of the company's average per year expenses for its first three years of operation |
| Companies benefiting from BOI promotions are usually granted privileges to obtain work permits for their foreign employees. Foreign US owned companies registered under the Treaty of Amity | 3 million |
| When all shares have been subscribed, promoters must hold the statutory meeting without delay[13]. Foreign owned companies benefiting from BOI promotions | decided on a case-per-case basis by the BOI |

The statutory meeting is a major component of the registration process. Indeed, it is during the statutory meeting that the governing rules of the company are decided by shareholders. However, it is general practice that the statutory meeting is a paper meeting that is "conducted" the same day of the company's registration.

The CCC sets out a number of rules:

1. A statutory report must be sent to every subscriber at least seven days before the statutory

- meeting. A copy of the statutory report will be required to register the company
2. Every shareholder has the right to be present at the statutory meeting[14]
 3. If the statutory meeting has been summoned, held or a resolution passed contrary to the provisions of the CCC or contrary to the regulation of the company, the Court shall on application of any director or shareholder, cancel any such resolution, provided that the application is entered within one month after the date of the resolution[15].

During the statutory meeting, the following points are determined:

1. The adoption of the Articles of Association, if any;
2. The ratification of any contracts entered into and any expenses incurred by the promoters in promoting the company;
3. Fixing the amount, if any, to be paid to the promoters;
4. Fixing the number of preference shares, if any, to be issued, and the nature and extent of the preferential rights accruing to them;
5. Fixing the number of ordinary shares or preferred shares to be allotted as fully or partially paid-up other than in money, if any, and the amount up to which they shall be considered as paid-up;
6. Appointing the initial director(s) and auditor(s) and determining the respective powers of the directors.

The resolution of the statutory meeting must be passed by a double majority including at least one half of the total number of subscribers entitled to vote, and representing at least one half of the total number of shares of such subscribers[16].

After the statutory meeting is held, promoters and subscribers shall hand over the business to the directors[17]. When 25% of the capital has been paid, the directors must apply for the registration of the company[18].

2.4 Registration

Directors must submit the registration application within three months of the date of the statutory meeting. If they fail to do so, the company will not be registered[19].

The application must contain the following elements[20]:

1. The total number of shares subscribed or allotted (distinguishing ordinary shares and preferences shares, if any);
2. The number of ordinary shares or preferences shares allotted as fully or partially paid-up otherwise than in money, and in the latter case, the extent to which they are paid up;
3. The amount already paid in money on each share;
4. The total amount of money received in respect of shares;
5. The names, occupations and addresses of the directors;
6. If the directors have power to act separately, their respective powers and the number or names of the directors whose signature is binding on the company;
7. The period, if any has been fixed, for which the company is formed;
8. The address of the principal of business office and all branches.

The application must be accompanied by the copy of the articles of association, if any, and of the proceedings of the statutory meeting, both certified by the signature of at least one director.

It is at this stage of the registration that Thai shareholders involved in a company that counts foreign shareholders may be required to disclose their source of investments.

Thai Shareholder Disclosure Requirements

To prevent foreigners from engaging in restricted activities via a Thai company using Thai nominees, Thai shareholders are required to provide evidence of their sources of funds along with the registration application in the following cases^[21]:

- Foreign shareholders hold less than 50% of the share capital; or
- A foreigner act as an authorized person on behalf of the company

If any of these conditions are fulfilled, Thai shareholders must provide documents certified by the bank stating their financial position. The documents must show an amount of money corresponding to their investment in the company.

However, the effectiveness of this regulation is not absolute. First, foreign shareholders may transfer money to the Thai's shareholders accounts with the purpose of obtaining a bank statement. Secondly, the company can be set up by three Thai promoters and be restructured later.

It should be noted that if the company intends to purchase land then there may be additional scrutiny from the Land Department.

In addition to the fee due during the filling of the MOA, there is a second fee in the registration stage. The fee is 500 baht for every 100,000 baht of the registered capital and is capped at 250,000 baht.

After all steps are completed, the Ministry of Commerce delivers a certificate of incorporation, attesting the birth of a new legal entity.

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^[1] Section 1097 of the Civil and Commercial Code

^[2] Section 1100 of the Civil and Commercial Code

^[3] Section 1113 of the Civil and Commercial Code

^[4] Section 8 of the Foreign Business Act

^[5] Section 1098 of the Civil and Commercial Code

[6] Section 1099 of the Civil and Commercial Code

[7] Section 1117 of the Civil and Commercial Code

[8] Section 1105 and 1111 of the Civil and Commercial Code

[9] Section 14 and 46 of the Foreign Business Act; Ministerial Regulation prescribing the minimum capital and period for bringing and remitting the minimum capital into Thailand B.E. 2545

[10] Ibid

[11] Rule of Department of Employment on the criteria for the consideration for work permit issuance B.E. 2552

[12] Rule of Department of Employment on the criteria for the consideration for work permit issuance B.E. 2552

[13] Section 1107 of the Civil and Commercial Code

[14] Section 1107 of the Civil and Commercial Code referring to section 1176

[15] Section 1107 of the Civil and Commercial Code referring to section 1195

[16] Section 1108 of the Civil and Commercial Code

[17] Section 1110 of the Civil and Commercial Code

[18] Section 1111 of the Civil and Commercial Code

[19] Section 1112 of the Civil and Commercial Code

[20] Section 1111 of the Civil and Commercial Code

[21] The Order of the Registrar Office of Partnership and Company Incorporation No. 205/2555 ,
Subject: The required documents for Partnership and Company incorporation