

Corporate Counsellor

TILLEKE & GIBBINS

Thai varieties of legal entities

Choosing the appropriate corporate registry

The principal forms of business organisation under Thai law are sole proprietorship, partnership, limited company, and public limited company. In addition, branches of foreign corporations are recognised. Representative offices and regional offices, which were recognised by the Regulations of the Prime Minister's Office announced before the promulgation of the Foreign Business Act 1999, are presently deemed as service activities under List 3, item 21, of the Act. Thus, an alien business licence must be obtained prior to starting business activities. This article will cover only the main forms of business organisation.

Sole Proprietorship. In a sole proprietorship, all of the proprietor's assets (business and personal) are subject to attachment or any other legal action, whether connected to the business or not. Registration is made at the Revenue Department, where the sole proprietor must acquire a taxpayer number and register for VAT if gross income will exceed two million baht per year. Some sole proprietorships are required to obtain a "commercial registration certificate" from the Business Development Department (BDD).

Partnerships. In Thailand, three forms of partnership are permitted: unregistered ordinary partnership, registered ordinary partnership, and limited partnership. Although the liabilities attached to the partners vary in these different forms of partnership, the general rules governing all types of partnership are similar. Under the Civil and Commercial Code (CCC), a partnership is defined as a contract whereby two or more persons agree to unite for a common undertaking with a view to share the profits. The distinctions and similarities between these three forms are discussed below.

Unregistered Ordinary Partnership. An unregistered ordinary partnership is one in which all partners are jointly liable for all obligations and debts of the partnership. It is not registered with the BDD; therefore, this type of partnership is not a legal entity (juristic person) and the partnership pays taxes at the rates applicable to individuals.

Registered Ordinary Partnership. A registered ordinary partnership is registered with the BDD, which makes it a juristic person with a separate and distinct personality from each of the partners. A partner of the registered ordinary partnership may pursue any claim of, or any right acquired by, the partnership against third persons, even if he did not actually participate in the transaction. A partner's liability for the partnership's obligations ceases two years after he leaves the partnership.

Limited Partnership. Like a registered

ordinary partnership, a limited partnership must also be registered with the BDD. A limited partnership is one in which there are one or more partners whose individual liabilities are limited to their respective contributions, and one or more partners who are jointly liable without limitation for all the obligations of the partnership. The contributions of the partners with limited liability must be in cash or other valued properties. A limited partner cannot contribute services alone. As a general rule, a limited partnership may only be managed by the partners with unlimited liability. A partner with limited liability who participates actively in the management of the partnership becomes jointly liable, without any limitation, for the partnership's obligations.

Limited Company. Under Thai law, there are two types of limited company: the limited private company and the limited public company. A private limited company, which is governed by the CCC, is a structure commonly used by those who desire a more permanent business in Thailand. A minimum of seven shareholders are required at all times. Shareholders' liability is limited to the remaining amount unpaid, if any, on the shares respectively held by them. Subject to foreign ownership restrictions under the Act and other laws, all shareholders may be foreigners. A limited company is managed by a board of directors in accordance with the law and its Articles of Association under the control of the shareholders.

A public limited company, which is governed by the Public Limited Company Act 1992, is a company that is established for the purpose of offering the sale of shares to the public. The rules and regulations concerning the procedures for offering shares for sale to the public are found in the Securities and Exchange Act 1992 under the control of the Securities and Exchange Commission.

The procedure for incorporating a public limited company is similar to that of a private limited company in registration requirements and shareholders liability; however, some differences exist. A public limited company must, for example, have at least 15 people as promoters who are 20 years of age or over and at least five directors, half of whom must reside in Thailand. Directors of a public limited company are subject to greater responsibilities than those of a private limited company. A private limited company may be turned into a public limited company through a shareholders resolution.

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