

Lorenz & Partners

Legal, Tax and Business Consultants

Frequently Asked Questions concerning Thai law (FAQs)

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I. CIVIL AND COMMERCIAL

Q: Our company plans to renovate our office space and rent temporary small space where our team can work during the renovation period. Do we need to change our registered office address to the temporary space during the renovation period?

A: It is not required to register this temporary location into the company's affidavit with the Department of Business Development (DBD). Please note that a temporary office cannot be registered for VAT purposes. Therefore, please make sure no tax invoices are being issued to or from your company specifying this location.

Q: How does machinery registration and machinery mortgage registration work?

A: The process and required documents for machinery registration are as follows:

1. Submit the following documents to the Central Office for Machinery Registration or provincial office where such machinery is located:
 - a) 3 copies of the machinery ownership registration application (Orr.1/1);
 - b) Company affidavit (if any);
 - c) PoA (if needed);
 - d) Copy of factory license (for factory under the Factory Act);
 - e) Catalogue or handbook of such machinery (if any);
 - f) Pictures of machinery 10x15 cm. showing its front and side view;
2. Location map of the factory or building, and invoice (if any).
The officer will check the submitted documents and make an appointment for machinery inspection.
3. Machinery inspection.
4. Announce and open for objection for the period of 5 days from the signing date by the officer.
5. If no one objects or claims the ownership against the submitter, the submitter shall pay the registration fee.
6. Affix the registration number plate to the machinery.
7. The officer issues the certificate of machinery registration (Rorr.2/1).
8. The submitter receives such certificate.

• **The process and required documents for machinery mortgage registration are as follows:**

1. Submit the following documents to the Central Office for Machinery Registration or provincial office where such machinery is located:
 - a) 2 copies of the machinery mortgage registration application (Orr.1/2);
 - b) Certificate of machinery registration (Rorr.2/1);
 - c) 3 copies of the machinery mortgage contract (Orr.2/1), (Orr.2/2);
 - d) Company affidavit (not older than 3 months);
 - e) Copies of ID card and house registration of authorized director(s);
 - f) For limited company, minutes of the meeting allowing machinery mortgage;
 - g) PoA (if needed); and
 - h) Mortgage fee: 0.1% of the loan amount, but not exceeding THB 120,000.

Q: What is the process to change a shareholder?

A: The new shareholder must be recorded in the **company's shareholder book**. The company may also submit the updated shareholder list to the Ministry of Commerce as evidence.

Please note that Thai law requires a minimum of three shareholders at all times.

The following stamp duty amounts will become due:

- (i) new share certificates: THB 5 per certificate; and
- (ii) share transfer document: 0.1% of the paid-up value of shares or of the nominal value of the instrument, whichever is greater.

II. CONTRACT

Q: What is the statutory prescription period for claims arising from product defects?

A: In general, the prescription period depends on the claim made by the customer.

Hire of work: Unless agreed otherwise in the contract, the customer can claim for the defects that occur within 1 year **after the delivery of work**.¹ Such statutory claim has a prescription period of 1 year after discovering the defect.²

Sale of goods: The statutory claim of the buyer has a prescription period of 1 year after discovering the defect.³

However, claims arising from a contractual warranty clause have a prescription period of 10 years.⁴ The 10-year period commences from the date the customer has the right to claim for defect or warranty.

Q: What is the deadline for our claim from a bank guarantee?

A: The creditor can claim from the guarantee even after its expiration, as long as such claim is made within the statutory prescription period (10 years⁵).⁶

However, to avoid any objection from the bank, we recommend to make the claim prior to expiration. Additionally, it is possible to stipulate in a guarantee letter that the guarantor is not responsible for any claims of the creditor that are not asserted within the period specified in the bank guarantee.⁷

Please note that the creditor must notify the default of the debtor to the bank within 60 days after the default. Otherwise, the bank will not be responsible for any interest beyond such 60-day period.⁸

Q: Is it allowed to limit or exclude one's contractual liability?

A: The parties can agree to waive the liability of the other party in advance.⁹ Additionally, the parties to a sales agreement can waive the liability of the seller for any defect.¹⁰ However, such limitation of liability does not apply to defects that are caused by an intentional act or gross negligence of a party.¹¹ More specifically under a sales agreement, such limitation of liability does not cover any defects that

¹ Section 600 of the Civil and Commercial Code (“CCC”).

² Section 601 CCC.

³ Section 474 CCC.

⁴ Section 193/30 CCC.

⁵ Section 193/30 CCC.

⁶ Supreme Court Judgment No. 2208/2558.

⁷ Supreme Court Judgment No. 1451/2524, 4761/2537, 1274/2544, and 6622/2546.

⁸ Section 686 CCC.

⁹ Section 373 CCC.

¹⁰ Section 483 CCC.

¹¹ Section 373 CCC.

are caused by the seller's intention or gross negligence or the facts that are known but concealed by the seller¹².

Therefore, it is possible and valid to stipulate a limitation of liability clause (e.g. capped amount as the sole exclusive remedy) in an agreement.

Please note, however, that the limitation of liability clause will only be applicable to the extent that it is fair and reasonable.¹³ This determination will be done on a case-by-case basis, considering all circumstances of the case, e.g. good faith, bargaining power, economic status, knowledge, advantage/disadvantage of the parties, ordinary usage, time and place, burden comparison of the contracting parties.¹⁴

An additional important note is that the strict liability toward the consumer/end user under the Liability for Damages Arising from Unsafe Product B.E. 2551 cannot be legally waived or restricted by an agreement between the parties.

Q: What is the statutory scope of liability for defects?

A: A seller is responsible for any defect that impairs the good's value, its fitness for ordinary purposes, and its fitness for purposes of the contract¹⁵, and that occurs or exists on or before the conclusion of the sale or the handover of the goods.¹⁶ However, the seller is **not** responsible for a defect that is apparent at the time of delivery and the buyer accepts the goods without reservation.¹⁷

Q: What is the statutory framework for the acceptance of goods?

A: The buyer is bound to accept the delivery and pay the price as per the terms of the agreement.¹⁸ If the buyer does not accept the correct delivery of goods, the buyer is in default.¹⁹

The seller is not responsible for minor defects (i.e. defects that do not impair the goods' value, its fitness for ordinary purposes, and its fitness for purposes of the contract²⁰). Accordingly, they do not affect the acceptance.

Q: Is it allowed to exclude the customer's right of termination?

A: If no right of termination is specified in the contract, the statutory right of termination shall apply.²¹ A total exclusion of the customer's right to terminate an agreement is likely to be considered unfair and thus not enforceable. This especially applies if the company is in breach or default and the clause prohibits the customer from terminating the agreement.

Please also note that the law stipulates that the termination of an agreement does not exclude the right of the party to claim for compensations or damages,²² unless this is explicitly stated in the agreement.

Q: Is it mandatory in Thailand to have contracts in both English and Thai language?

A: In general, no. However, the Thai translation of the contract will be required for legal proceedings or legal cases that lodged to the court in Thailand. Please note that there are some specific documents or contracts that are required to be made in Thai language, e.g. the controlled contracts under the

¹² Section 485 CCC.

¹³ Section 8 of the Unfair Contract Terms Act.

¹⁴ Section 10 of the Unfair Contract Terms Act.

¹⁵ Section 472 CCC.

¹⁶ Supreme Court Judgment No. 459/2514.

¹⁷ Section 473 (2) CCC.

¹⁸ Section 486 CCC.

¹⁹ Section 486 CCC.

²⁰ Section 472 CCC.

²¹ Section 386-388 CCC.

²² Section 391 CCC.

Consumer Protection Board (e.g. lease agreement, car sale), contracts with government organization, working rules and record of employees of the company.

Q: Does a company's name change impact an existing contract?

A: Despite its name change, the legal identity of the company remains the same. Therefore, such change generally does not affect the validity of an existing contract, and the agreed terms and conditions under the said contract shall remain in full force.

In case the contractual parties wish to document such change in writing (to avoid any confusion of the involved staff, auditor, etc.), they may consider signing an addendum prescribing the party's name change.

III. POWER OF ATTORNEY

Q: Which documents are required to support a PoA?

A: It is quite common in Thailand that when a company uses a PoA, the counterparty will ask for the following documents to support the PoA:

- 1) Copy of the company affidavit;
- 2) Copy of the signing director's passport;
- 3) In some cases, the counterparty may also request the signed passport copy of the attorney;

Q: How to terminate a PoA?

A: We suggest circulating a termination letter internally, so that the staff will acknowledge that the old PoA is terminated and it cannot be legally used in the future.

It is not required to circulate such termination letter to all suppliers or customers, because any actions that have been done under the scope of the PoA prior to the termination will still be valid. However, a third party who entered into an agreement in good faith without knowing that the PoA had been revoked can claim that they acted in good faith, and the agreement would be binding on the company. We further suggest to add an expiration date into the PoA to limit the validity period of the PoA.

Q: How much stamp duty is required on the PoA?

A: A PoA:

- for single actions is subject to THB 10 stamp duty per attorney;
- for multiple actions is subject to THB 30 stamp duty per attorney.

IV. WORK PERMIT

Q: What are the visa and work permit requirements for foreigners who will work in Thailand?

A: A non-Thai national who intends to work in Thailand requires a Non-immigrant "B" Visa before being able to apply for work permit. The visa must be applied for with the Thai embassy/consulate and will usually be granted in approx. 2-3 working days, depending on the embassy/consulate. The process for a work permit will take approx. 10-15 working days.

Q: Is it possible to hire a foreigner in Thailand on a freelance basis, i.e. without employing him and providing him a work permit?

A: A foreigner working under a service contract as freelancer still requires a work permit. Therefore, unless he has his own company in Thailand which sponsors his work permit, such foreigner cannot legally work as freelancer.

V. Miscellaneous

Q: Does a digital copy have the same legal effect as the original document?

A: The status of a digitalized documents is recognized under Thai law. Such electronic information “shall not be denied legal effect and enforceability, solely on the ground that it is in the of a data message”.²³ Therefore, in theory, e-documents have the same legal effect as paper documents (and may also be subject to (electronic) stamp duty). However, in practice, the counterparty may claim to not have signed the document, so we recommend keeping signed originals.

Q: Which labour-related documents under the Labour Protection Act need to be kept by the employer?

A: An employer with ten or more employees must produce a record of employees in Thai language²⁴. Such record together with the documents related to wage/overtime payment must be kept for at least 2 years after the termination of each employee.

Moreover, the working rules have to be posted on the announcement board and a copy must be kept for the labour inspector.²⁵ The LPA further requires to keep the record of the change of the working conditions for young workers for the labour inspector.²⁶

In addition, we recommend keeping originals of important documents to avoid future complications, in particular:

- Documents that contain the employee’s signature (e.g. employment agreements, leave requests, resignation letter, receipt, acknowledgement, consents, other agreements, etc.);
- Documents that may lead to the dispute (termination letter, disciplinary action, evaluation, etc.).

Less important documents that generally do not affect the case or contain no signature of the employee may be stored electronically (e.g. CV or portfolio of the employees).

Q: Under Thai laws, is there any cash limit that a government official or individual in the private sector may receive as a gift?

A: The conditions for government officials in receiving gifts²⁷, assets or other benefits²⁸ are as follows:

- The maximum value of gifts received from each person is **THB 3,000 per occasion**. This limit does not apply under the following circumstances:²⁹
 - The gift is given by a relative³⁰ who gives in gratuitous act in an appropriate amount to his/her status; and
 - The gift is given to persons generally (not specifically given to one person or everyone is entitled to the same thing generally);

²³ Section 7 of the Electronic Transactions Act B.E. 2544.

²⁴ Section 112 and 115 of the Labour Protection Act.

²⁵ Section 108 of the Labour Protection Act.

²⁶ Section 45 (2) of the Labour Protection Act.

²⁷ According to Clause 3 of the Office of the Prime Minister on Giving or Receiving Gifts of Government Officers B.E. 2544 (2001), the term “gift” means money, assets, or other benefits given in courtesy or as rewards or gratuitous, privileges, discounts, services or entertainment, including expenses for trips or travelling, accommodation, meals, or anything in the same kind in forms of cards, tickets, or other type of evidence, advance or rebate payment.

²⁸ According to Clause 3 of the Office of the National Anti-Corruption Commission (NACC) re Criteria of Receiving Asset or Other Benefit by Moral Obligation of Government Officers B.E. 2543 (2000), the term “other benefit” means valuable things such as discounts, entertainment, services, trainings, or others of the same kind.

²⁹ Clause 5 of the Office of the National Anti-Corruption Commission (NACC) re Criteria of Receiving Asset or Other Benefit by Moral Obligation of Government Officers B.E. 2543 (2000).

³⁰ According to Clause 3 of the Office of the National Anti-Corruption Commission (NACC) re Criteria of Receiving Asset or Other Benefit by Moral Obligation of Government Officers B.E. 2543 (2000), the term “relatives” means parents, descendants, siblings, uncles, aunts, spouse, parents or descendants of spouse, adopted children, or adaptors.

- The gift is given in special occasions where gifts are generally given pursuant to moral etiquette, or pursuant to tradition or custom, or in courtesy generally practiced in the society;
- Government officers can give consent directly or indirectly their family members³¹ to receive gifts from persons in connection with the performing of the officer's duty only if received from the following persons:³²
 - Persons applying or requesting for the authority to process a specific matter, e.g. applying for certification or complaints;
 - Persons doing business or having part in business dealing with government authority, e.g. procurement or concession;
 - Persons conducting activities controlled or monitored by government authority, e.g. factories or collateral businesses; and
 - Persons who may receive benefit or effect from performing or not performing of the government officer's duty.

Please note that these regulations also bind government officers for up to 2 years after they have retired from their office.³³

Receiving gifts or benefits that are not in compliance with the above regulations may constitute a criminal offense (for both giver and receiver) and be subject to disciplinary punishment.

There is no express law prohibiting companies to offer or give gifts to other 3rd parties who are not government officers (employees or owners of a private company).

Please note that from a tax perspective, the maximum value under the Revenue Code shall be taken into consideration. To be able to use the price of the gift as an expense of the company for tax benefit, the price of the gift must **not exceed THB 2,000**.³⁴ This applies for both, government officials and employees of private companies.

Q: What are the applicable data protection laws?

A: According to the Personal Data Protection Act B.E. 2562 ("PDPA"), "personal data" means any data pertaining to a natural person which enables the identification of such person, whether directly or indirectly;³⁵ e.g. name, address, email address, telephone number, identification number, location data, IP address, as well as other information which can indirectly be linked to a person (e.g. health data, consumption of goods and services). Personal data may only be collected, used, or disclosed if the consent of the data owner is given on or before such action.



³¹ According to Clause 3 of the Regulation of the Office of the Prime Minister on Giving or Receiving Gifts of Government Officers B.E. 2544 (2001), the term "family member" means spouse, children, parents, siblings.

³² Clause 7 of the Regulation of the Office of the Prime Minister on Giving or Receiving Gifts of Government Officers B.E. 2544 (2001).

³³ Clause 8 of the Office of the National Anti-Corruption Commission (NACC) re Criteria of Receiving Asset or Other Benefit by Moral Obligation of Government Officers B.E. 2543 (2000) and Section 128 of the Organic Act on Corruption Prevention and Suppression B.E. 2561 (2018).

³⁴ Ministerial Regulation No. 143 under Revenue Code.

³⁵ Section 6 PDPA.