

Doyle's Practice Guide to Thailand Business Law

道乐泰国商业投资法律实用指南

By Michael Doyle 编辑：麦克·道乐

Chapter 2

第二章

What are the Legal Issues Associated with the Start-up of a Company?

公司创办涉及的法律问题有哪些？

There are several issues, both legal and practical, associated with the start-up of a private company limited (“company”). The process involves registration with the Ministry of Commerce (MOC), obtaining a VAT (Value Added Tax) Certificate, if required, from the Revenue Department; as well as obtaining other government licenses and approvals that may be needed, depending on the business activities the company seeks to engage in. Note that shelf companies are not readily available in Thailand, so this process must generally be followed each time a new company is formed.

开办私营有限公司（“公司”）有几个相关的法律和实际问题。创办公司过程涉及在商务部（MOC）注册、从税务局获取增值税（VAT）证书（如果需要），以及获取其他可能需要的政府许可和批准，这取决于公司所希望从事的业务活动。请注意，泰国没有现成的“空壳公司”，因此一般来说，每次成立新公司时都必须遵循这一流程。

Appendix A contains the list of information required during the company registration process.

附录 A 包含公司注册过程中所需信息的清单。

Appendix B contains the list of documents required to obtain the company's VAT Certificate.

附录 B 载有获得公司增值税证书所需的文件清单。

1. Promoters

公司发起人

The parties responsible for registering the company with the MOC are referred to as the company's promoters. These must be at least 2 individuals (not business entities) and they must be available to sign documentation, as required, during the registration process.

作为公司发起人负责向商务部注册公司名称。公司发起人必须至少有 3 名自然人（非商业实体），且必须有能力在注册过程中根据需要签署各类文件。

The promoters need to be among the company's initial shareholders immediately after the company registration. Each is required to hold a minimum of one share upon registration – at which time they are no longer promoters and become shareholders. However they are generally free to transfer those shares to existing shareholders or third parties thereafter, if they wish to do so. Individuals serving as promoters are not required to reside in Thailand.

公司注册后，发起人必须立即成为公司的初始股东。公司注册时，每位发起人必须至少持有一股股份，此时他们不再是发起人，而是股东。不过，如果他们愿意，一般可以在此后自由地将这些股份转让给现有股东或第三方。担任发起人的个人无需在泰国居住。

A promoter's potential legal liability is generally limited to the par value of the shares they hold after registration is completed. The promoters are also responsible for paying expenses associated with the company's registration — although after registration the company may choose to reimburse them for those expenses.

发起人的潜在法律责任一般以注册完成后所持股份的面值为限。发起人还负责支付与公司注册相关的费用——尽管在注册后，公司可能会选择向他们偿还这些费用。

2. Timing

时间

Registration of the company occurs at the MOC and can normally be accomplished within one to two weeks — actual time taken depends on factors such as: the types of business activities the company is to pursue, the speed with which the investor supplies required information and documents, and the availability of the parties who are required to sign various documents.

公司的注册在商务部进行，通常可在一到两周内完成——实际所需的时间取决于以下因素：公司将从事的商业活动类型、投资者提供所需信息和文件的速度，以及需要签署各种文件的各方是否有空。

Note that if the company falls under the definition of “foreign” (as defined in the Foreign Business Act) it will normally be required to obtain Cabinet approval or a Foreign Business License prior to commencing operations (see Chapter 3).

请注意，如果公司符合“外国”的定义（如《外国企业法》所定义），通常需要在开始运营前获得内阁批准或外国企业许可证（见第 3 章）。

Applying for a VAT Certificate (if required) takes place after registration with the MOC and can normally be accomplished within one week of providing all required information and documents to the Revenue Department.

申请增值税证书（如有需要）需要在商务部注册后进行，通常可在向税务局提供所有所需信息和文件后一周内完成。

3. Filings

文件提交

All documents associated with the company's registration must be submitted to the registrar of the Department of Business Development of the MOC, or, if the company's office is to be located outside of Bangkok, to the filing office of the province where the office will be located.

与公司注册相关的所有文件都必须提交给商务部业务发展部的注册处的注册官。如果公司办公地点不在曼谷，则向办公地点所在省份的备案办公室提交申请。

All documents associated with the registration for the VAT Certificate must be submitted to the District Revenue Office in Bangkok, or, if the company office is to be located outside Bangkok, to the Revenue Office of the province where the office will be located.

与增值税证书登记相关的所有文件都必须提交给曼谷地区税务局，如果公司办事处设在曼谷以外，则必须提交给办事处所在省份的税务局。

4. Company Name 公司名称

The first step in the company registration process is the name reservation. In order to reserve the name, one of the promoters is required to apply via the internet at www.dbd.go.th. 公司注册流程的第一步是提交预先取好的名称，发起人之一需通过互联网在 www.dbd.go.th 上申请。

After this, the registrar will examine the application in order to ensure that:
之后，注册官将对申请进行审查，以确保：

- i. No similar company names have previously been reserved; and that
以前没有保留过类似的公司名称；并且
- ii. The names submitted do not violate any ministerial rules.
所提交的名稱不违反任何部级规定。

If any of the applicant's proposed names are in conflict with either of the above, they will be rejected. This process can normally be completed within two hours. However, if all the names submitted are rejected, the applicant will need to re-submit the form requesting a different name. 如果申请人提出的任何名称与上述任一名称相冲突，都将被拒绝。这一过程通常可在两小时内完成。但是，如果提交的所有名字都被拒绝，申请人需要重新提交表格，申请一个不同的名字。

The registrar has considerable discretion with regard to the company names submitted. Often the first name, or even the first two names, are rejected for violating one of the two rules stated above. 登记员对提交的公司名称有很大的自由裁量权。通常，第一个名称，甚至是前两个名称，都会因违反上述两条规则之一而被拒绝。

Investors should therefore not invest in marketing materials containing the company's intended name until after the registrar's approval of that name.
因此，在登记员批准公司名称之前，投资者不应投资于包含公司预定名称的营销材料。

Note that a name may be reserved for only 30 days from the date of approval. This means that if the applicant does not take the next step in the company application process (submitting a document called the Memorandum of Association) within 30 days of reserving the name, they will be required to go through the reservation process again.

请注意，名称自批准之日起只能保留 30 天。这意味着，如果申请人在保留名称后 30 天内没有采取公司申请程序的下一步（提交一份公司章程），他们将被要求重新进行保留程序。

5. Signatures 签名

Once the name is reserved, the company Memorandum of Association (MOA) must be submitted. Appendix C contains the official MOA form together with an English translation. You can see from the English translation that the MOA contains, among other things:

保留名称后，必须提交公司章程大纲（MOA）。附录 C 载有正式的公司章程大纲表格和英文译文。从英文译文中可以看出，公司章程大纲包括以下内容：

i. The names and personal information of the promoters (minimum two individuals);
发起人的姓名和个人信息（至少两人）；

ii. Amount of the company's registered capital (see Section 7);
公司注册资本金额（见第 7 节）；

iii. Province in which the company will be located (see Section 6); and
公司所在省份（见第 6 节）；以及

iv. The company's intended scope of business activities.
公司计划的业务活动范围。

Each of the promoters is required to sign the original MOA. This can cause logistical problems if the promoters are located in different countries.

每个发起人都必须在原始的公司章程大纲上签字。如果发起人位于不同的国家，这可能会引起物流问题。

6. Address

地址

The MOA must contain the physical address of the company to be formed. A PO Box address will not be acceptable.

公司章程大纲必须包含要成立的公司的实际住所。不接受邮政信箱地址。

During the company registration process the sufficiency of the company address is normally not an issue. However, it can become an issue if the company is later required to obtain a VAT Certificate.

在公司注册过程中，公司地址是否充分通常不是问题。但是，如果公司日后需要获得增值税证书，这可能会成为一个问题。

As part of the process to obtain a VAT Certificate the company is required to obtain the written permission of the owner of the premises where the company will be located (if the company is not the owner of those premises). Appendix D contains the permission form that the owner, or the owner's authorized representative, is normally required to sign, and an English translation.

作为获得增值税证书程序的一部分，公司必须获得公司所在场所业主的书面许可（如果公司不是这些场所的业主）。附录 D 载有通常要求业主或业主授权代表签署的许可表及英文译文。

If the company address is a residential (not commercial) space, the building owner or landlord will often be reluctant to sign this permission. A common reason for such refusal is that the owner does not want the business traffic in the building that would be caused by allowing the company to be situated there.

如果公司地址是住宅（非商业）空间，建筑所有人或房东通常不愿意签署该许可。拒绝的一个常见原因是，业主不希望因允许公司在此办公而造成建筑内的商业流量。

Also, if the registered address is a condominium unit, be aware that some condominium buildings include a specific provision in their standard sales agreements, or the condominium juristic office's rules, prohibiting the condominium owner from using their unit as a business address. 此外，如果注册地址是公寓单元，请注意有些公寓楼的标准销售协议或公寓法人办公室的规则中会有具体规定，禁止公寓业主将其单元用作商业地址。

7. Registered Capital 注册资本

Registered capital refers to the total financial responsibility of the company's shareholders with respect to the company. Each individual shareholder may make their investment in the company by using either cash or non-cash assets. If non-cash assets are to be contributed, the shareholder(s) should have such assets properly appraised during the company registration process. Each shareholder is required to pay into the company a minimum of 25% of their shares' par value. The amount of capital actually paid into the company by the shareholders is referred to as the company's "paid up" or "paid in" registered capital.

注册资本是指公司股东对公司承担的全部财务责任。每个股东可以使用现金或非现金资产对公司进行投资。如果以非现金资产出资，股东应在公司注册过程中对这些资产进行适当评估。每位股东至少需向公司缴纳其股份面值的 25%。股东实际缴入公司的资本额称为公司的“实缴”或“实收”注册资本。

EXAMPLE: Suppose a company's registered capital is set at 10 million baht; then 2.5 million baht would be required to be actually paid into the company by the shareholders upon final registration of the company.

示例：假设一家公司的注册资本定为泰铢 1 000 万，那么在公司最终注册时，股东需向公司实际支付泰铢 250 万。

Each shareholder should note that although he is generally required to pay in only 25% of his shares' par value upon registration, his potential liability associated with the company's activities is 100% of his shares' par value.

每位股东都应注意，虽然他在注册时一般只需缴纳其股份面值的 25%，但他对公司活动的潜在责任却是其股份面值的 100%。

EXAMPLE: Suppose one of the shareholders in a company holds shares with a cumulative par value of one million baht. Upon registration, however, this shareholder elects to pay into the company the minimum of only 25% of the shares' par value, or 250,000 baht. The company is later sued by a third party in civil court for 20 million baht, which exceeds the value of the company's total assets. The third party wins the lawsuit. As the shareholder has not paid in 100% of his shares' par value, he could potentially be required by the presiding court to pay into the company the remaining 750,000 baht in order to enable the company to pay the judgment.

示例：假设某公司的一名股东持有累计面值为泰铢 100 万的股份。但在注册时，该股东选择只向公司支付股票面值的最低 25%，即泰铢 25 万。该公司后来被第三方告上民事法庭，索赔泰铢 2 000 万，超过了公司总资产的价值。第三方赢得了诉讼。由于该股东没有支付其股份面值的 100%，主审法院可能会要求他向公司支付剩余的泰铢 75 万，以使公司能够支付判决。

Note that Thai law stipulates that the company's debt to equity ratio may not exceed seven to one — meaning that the company is not allowed to borrow more than seven times the amount of its equity.

需要注意的是，泰国法律规定，公司债务与股本的比率不得超过 7 比 1，也就是说，公司借款不得超过股本的 7 倍。

EXAMPLE: Suppose a company is established, and its registered capital is designated at 10 million baht. According to the above rule, this company may not borrow more than 70 million baht, unless the company's registered capital first increases accordingly.

示例：假设成立了一家公司，其注册资本定为泰铢 1 000 万。根据上述规则，除非公司注册资本先相应增加，否则该公司的借款不得超过泰铢 7000 万。

8. Minimum Capital 最低注册资本

The general rule is that very low minimum registered capital is required for a company limited (registered par value of each share must not be less than five baht per share). An exception to this minimum registered capital requirement rule applies, however, if the company falls under the definition of a foreign company (see Chapter 3). If so, the following rules apply:

通常，有限责任公司的最低注册资本要求非常低（每股注册面值不得低于每股泰铢五）。但是，如果公司符合外国公司的定义（见第 3 章），则最低注册资本要求规则有例外。如果是这样，则适用以下规则：

i. If the foreign company engages in activities specified in the Foreign Business Act (see Chapter 3) its minimum registered capital must be the greater of either 25 percent of the company's average per year expenses for its first three years of operation, or three million baht fully (100%) paid up. Some exceptions apply.

如果外国公司从事《外国企业法》（见第 3 章）中规定的活动，其最低注册资本必须为公司前三年平均年支出的 25%，或全额（100%）缴付的泰铢 300 万，以二者中较高者为准。但也有例外情况。

ii. If the foreign company does not engage in the above specified activities, its minimum registered capital must be two million baht fully (100%) paid up.

如果外国公司不从事上述规定的活动，其最低注册资本必须为泰铢 200 万（100%）。

9. Articles of Association 公司章程

Prior to final registration, the applicant will be required to submit the company's Articles of Association ("Articles") to the MOC. The Articles state basic rules that the company is required to follow after incorporation is successfully completed.

在最终注册之前，申请人需要向商务部提交公司章程（“章程”）。章程规定了公司成功注册后必须遵守的基本规则。

These rules generally include the frequency with which directors' and shareholders' meetings take place, what constitutes a quorum at meetings, notice requirements for meetings, the numbers required to pass a resolution at a meeting, etc.

这些规则一般包括董事会议和股东会议的召开频率、会议法定人数的构成、会议通知要求、会议通过决议所需的人数等。

A company is normally completely free (within legal limits and as long as proper regulatory procedures are followed) to submit its own unique Articles; however, many new companies will instead initially elect to adopt standard Articles upon incorporation.

通常情况下，公司完全可以（在法律允许的范围内，只要遵守适当的监管程序）提交自己的独特章程；但是，许多新公司在成立之初都会选择采用标准章程。

Standard Articles represent very basic rules for the company's operation that comply with Thai law. Normally, if standard Articles are presented to the presiding MOC official they will be accepted without amendment. Therefore, in order to avoid potential delays, many promoters choose to register standard Articles at the time of registration and then adopt the company's own unique (non-standard) Articles at a later date. Appendix E contains standard Articles, presented together with an English translation.

标准章程是符合泰国法律的公司运营基本规则。通常情况下，如果将标准章程提交给主审的商务部官员，他们将不做修改、直接接受。因此，为了避免可能出现的延误，许多发起人选择在注册时登记标准章程，然后在日后采用公司自己的独特（非标准）章程。附录 E 载有标准章程和英文译文。

10. Directors 董事

After registration, the company's Affidavit, which is the document naming the company's director(s) and their authority to sign on behalf of the company, remains on file with the MOC. 注册后，公司的宣誓书（即公司董事姓名及其代表公司签字的授权文件）仍在商务部存档。

Directors are designated as authorized, or unauthorized, in the Affidavit: Authorized directors are allowed to sign on behalf of the company, unauthorized directors are not.

董事在宣誓书中被指定为授权董事或非授权董事：经授权的董事可以代表公司签字，未经授权的董事则不能。

As a controlling mechanism, a company will often designate that only a combination of two or more directors, signing together, are authorized to sign on behalf of the company. Also, many companies will designate that a director(s) may sign on behalf of the company only in combination with the company seal; making the physical presence of the company seal another control mechanism.

作为一种控制机制，公司会规定只有两名或两名以上的董事共同签署才有权代表公司签字。此外，许多公司会指定董事只能在加盖公司印章的情况下代表公司签字。这使得公司印章的实际存在成为另一种控制机制。

Appendix F contains the Affidavit form and an English translation. The company is required to have a minimum of one director. Directors may be individuals only.

附录 F 载有宣誓书表格和英文译文。公司必须至少有一名董事。董事只能是个人。

Note that, unlike shareholders, directors (both authorized and unauthorized) have legal obligations, and substantial liability, associated with the actions of the company. A person should carefully consider this before agreeing to serve as a company director.

请注意，与股东不同，董事（包括授权董事和未授权董事）对公司的行为负有法律义务和实质性责任。个人在同意担任公司董事之前应仔细考虑这一点。

11. Auditor Information

审计师信息

During the company registration process the promoters will be required to supply the name, license number, and remuneration of the auditor the company is to engage.

在公司注册过程中，公司发起人需要提供公司计划聘请的审计师的姓名、执照号及报酬。

12. Official Fees

官方费用

The official fees payable to the MOC are fixed, irrespective of the amount of the company's registered capital. There are two separate official fees payable at different stages of the incorporation process:

无论公司的注册资本有多少，应付给商务部的官方费用都是固定的。在公司设立的过程中，有两个不同阶段需要支付官方费用。

The first, payable at the time of approval of the MOA, is 500 baht.

第一个官方费用在公司章程大纲批准时支付，费用为泰铢 500。

The second, payable upon the company's final registration, is 5,000 baht.

第二个官方费用在公司最终注册时支付，费用为泰铢 5,000。

13. Bank Accounts

银行账户

Immediately after registration is complete most companies will want to open a corporate bank account. Requirements to open such an account vary from bank to bank, but generally, the company will be required by the bank to provide its various company documents. Appendix G contains a sample list of the documents and information which may be requested by the bank.

注册完成后，大多数公司会立即开设公司银行账户。开设公司银行账户的要求因银行而异，但一般情况下，银行会要求公司提供其各种公司文件。附录 G 载有银行可能要求提供的文件和信息的样本清单。

Note that if any of the signatories for the bank account are foreigners, many banks will require that each of the foreign signatories submit a valid work permit (see Chapter 5) prior to opening the account.

请注意，如果银行账户的任何签字人是外国人，许多银行会要求每位外国签字人在开户前提交有效的工作许可证（见第 5 章）。

14. Public Access to Company Details

公众获取公司详细信息的途径

After the company is successfully registered, many details regarding the company's structure are available to the public at the MOC. These details include the company's list of shareholders and directors, registered capital, articles of incorporation, registered address, auditor's report, and balance sheet for the preceding year, etc.

公司成立后，有关公司架构的更多详细信息都可以通过商务部向公众公开。这些详细信息包括公司的股东和董事名单、注册资本、公司章程、注册地址、审计报告和上一年的资产负债表等。

Jointly produced by Seri Manop & Doyle and Hylands Law Firm
由赛瑞 马依珀&道乐律师事务所与浩天律师事务所联合制作

如需进一步信息，请联系：
赛瑞 马依珀&道乐 律所

Tel 电话: (662) 693 2036
Fax 传真: (662) 693 4189
E-mail 邮件: info@serimanop.com
<https://www.serimanop.com/chinese.php>

21 Soi Amnuaiwat, Suthisan Road,
Samsennok Sub-district, Huaikwang
District, Bangkok 10310, Thailand

