

BA 291 – STARTING UP A BUSINESS

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Brain Storming

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You got an idea. You want to set up a business.

Which factors do you have to consider?



Basic definitions

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A natural person: a real human being

A legal person (Juristic person): characteristic of a non-living entity regarded by law to have the status of personhood.

Legal personality allows one or more natural persons to act as a single entity (a composite person) for legal purposes. In many jurisdictions, legal personality allows that composite to be considered under law separately from its individual members or shareholders. They may sue and be sued, enter contracts, incur debt, and own property.

Basic definitions

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Personal income tax: a tax levied on the total income of individuals (with some deductions permitted)

Principle applicable	Amount of assessable income	Tax Rate
Progressive Rate	From 1 to 150,000	Exempt
	From 150,000 to 500,000	10%
	From 500,001 to 1,000,000	20%
	From 1,000,001 to 3,000,000	30%
	From 4,000,000 to 4,000,001	37%

Corporate tax: a direct tax levied on the profits made by companies or associations and often includes capital gains of a company. The corporate tax in Thailand is 23%.

Tax Deduction: Personal Income Tax

Type of Income	Deduction
a. Income from employment	40% but not exceeding 60,000 baht
b. Income received from copyright	40% but not exceeding 60,000 baht
c. Income from letting out of property on hire	
1) Building and wharves	30%
2) Agricultural land	20%
3) All other types of land	15%
4) Vehicles	30
5) Any other type of property	10%
d. Income from liberal professions	30% except for the medical profession where 60% is allowed
e. Income derived from contract of work whereby the contractor provides essential materials besides tools	actual expense or 70%
f. Income derived from business, commerce, agriculture, industry, transport, or any other activities not specified in a. to e.	actual expense or 65% - 85% depending on the types of income

Tax Deduction: Corporate Income Tax

In calculating CIT, deductible expenses are as follows:

1. Ordinary and necessary expenses. However, the deductible amount of the following expenses is allowed at a special rate:
 - 200% deduction of Research and Development expense,
 - 200% deduction of job training expense,
 - 200% deduction of expenditure on the provision of equipment for the disabled;
2. Interest, except interest on capital reserves or funds of the company;
3. Taxes, except for Corporate Income Tax and Value Added Tax paid to the Thai government;
4. Net losses carried forward from the last five accounting periods;
5. Bad debts;
6. Wear and tear;
7. Donations of up to 2% of net profits;
8. Provident fund contributions;
9. Entertainment expenses up to 0.3% of gross receipt but not exceeding 10 million baht;
10. Further tax deduction for donations made to public education institutions, and also for any expenses used for the maintenance of public parks, public playgrounds, and/or sports grounds;
11. Depreciation: Provided that in no case shall the deduction exceed the following percentage of cost as shown below. However, if a company adopts an accounting method, which the depreciation rates vary from year to year, the company is allowed to do so provided that the number of years over which an asset depreciated shall not be less than 100 divided by the percentage prescribed below.

Limited liability: a form of business ownership in which business owners are legally responsible for no more than the amount that they have contributed to a venture. If for example, a business goes bankrupt an owner with limited liability will not lose unrelated assets such as a personal residence (assuming they do not give personal guarantees).

Unlimited liability: A type of investment in which a partner or investor can lose an unlimited amount of money.

Joint liability: the result of two or more parties applying jointly for credit as co-borrowers, which is implied in a general partnership. By doing this, any partner entering into a contract with or without the knowledge of other partners automatically binds all partners to that contract.

Joint and several liability: a person who was harmed or wronged by several parties could be awarded damages and collect from any one, several, or all of the liable parties.

There are 3 kinds of business organizations in Thailand:

- Sole proprietorships
- Partnerships
 - Unregistered ordinary partnership
 - Ordinary partnership
 - Limited partnership
- Limited companies
 - Private Company
 - Public company



- unincorporated business owned by individual, that is not incorporated
- no legal entity, but commercial registration is needed
- no legal distinction between the owner and the business
- the owner receives all profits (subject to taxation specific to the business) and has unlimited responsibility for all losses and debts
- Typically small business with less than 50 employees

Example: small retail store, restaurants, hair salon, grocery store

- Individual or groups (partnership, corporations) who want to do the business activities have to register the business
- Business that has to be registered must have a sales volume from 20 baht per day or the total of goods from 500 baht
- The registration must be done within 30 days from the start date
- Peddler, social enterprise do not have to register

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Advantages of a Sole Proprietorship

- Ease and cost of formation
- Secrecy
- Distribution and use of profits
- Flexibility and control of the business
- Government regulation
- Taxation (pay income tax)

Disadvantages of a Sole Proprietorship

- Unlimited liability
- Limited sources of funds
- Limited skills
- Lack of continuity
- Lack of qualified employees
- Taxation (deduction max. 60,000 Baht)

A form of business organization defined by the Uniform Partnership Act as “an association of two or more persons who carry on as co-owners of a business for profit”

3 Forms of partnership

- Unregistered ordinary partnership (ห้างหุ้นส่วนสามัญไม่จดทะเบียน)
- Ordinary partnership (ห้างหุ้นส่วนสามัญ)
- Limited partnership (ห้างหุ้นส่วนจำกัด)



Articles of partnership (หนังสือบริคณห์สนธิ): Legal documents that set forth the basic agreement between partners which contains

1. Name, purpose, location of the partnership
2. Duration of the agreement
3. Authority and responsibility of each partner
4. Character of partners (i.e., general or limited, active or silent)
5. Amount of contribution from each partner
6. Division of profits or losses
7. Salaries of each partner

8. How much each partner is allowed to withdraw
9. Death of partner
10. Sale of partnership interest
11. Arbitration of disputes
12. Required and prohibited actions
13. Absence and disability
14. Restrictive covenants
15. Buying and selling agreements



Unregistered ordinary partnership

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- not registered by law as incorporate
- no legal entity (ไม่เป็นนิติบุคคล)
- consists of at least 2 members
- partnership is based on a contractual relationship. Partners must make a contribution in form of money, properties or services for the partnership
- not allowed to own property, to sue or be sued in the name of partnership
- aim of the partnership is to invest and undertake a business with a view of sharing profits and loss
- all partners are jointly and without limit liable for all the obligations of the partnership (jointly & several liability)



(Registered) ordinary partnership

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- after registration, ordinary partnership can become incorporated as a juristic person (have legal entity).
 - entitle to own property, sue or be sued in the name of the partnership.
 - pay tax as corporate entity (corporate tax 23%*)
 - assets of the partnership have to be examined before creditors can claim debt payment from the partners (Second obligor, ลูกหนี้ชั้นที่ 2).
- This is unlike an unregistered ordinary partnership, in which each partner is directly liable for debts incurred by the partnership.



Limited partnership

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A business organization that has at least one general partner, who assumes unlimited liability, and at least one limited partner whose liability is limited to his or her investment in the business

General partner

- assumes unlimited liability
- able to manage
- usually receive larger share of profits

Limited partner

- assumes limited liability
- liability is limited to initial investment
- do not directly participate in management.
- function as an investor



Advantages and disadvantages of partnership

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Advantages

- Ease of organization- requires articles of partnership
- Availability of capital & credit- greater earning power and credit rating
- combined knowledge & skills
- Decision making
- Regulatory controls – few regulations controls affecting its activities

Disadvantages

- Unlimited liability (for general partner)
- Business responsibility – all partners are responsible for business actions of all others
- Life of the partnership (= life of the general partnership, 2-persons partnership terminated when partner dies or withdraws)
- Distribution of profits – profits are distribute to partners by share or as specified in article of partnership
- Limited sources of funds – shares are not sold to public
- Taxation of partnerships (income + corporate)

- Terms of contract of partnership provide for it.
- A definite period of time described in the terms of partnership has expired.
- The partnership was formed for a single undertaking, which has been completed.
- Any of the partners gives due notice to the others (withdrawal)
- Upon death, bankruptcy or incapacity of a partner (general partner)
- exception: the partnership can continue to exist if the remaining partners buy the shares of the withdrawing partner.

1. Keep profit sharing and ownership at 50-50
2. Partners should have different & complementary skill sets
3. Honest is critical
4. Maintain face-to-face communications
5. Transparency – sharing information
6. Awareness of funding constraints and limited resources
7. To be successful, you need experience
8. Family is priority; limit associated problems
9. Do not become too infatuated with “the idea” think implementation
10. Couple optimism with realism in sales and growth expectations

- the most common structure for conduction business in Thailand
- established by at least 3 people (Private company), 15 people (Public company)
- must be registered as juristic person
- able to own property and carry on the business under its name
- typically owned by many individuals or organizations who own shares of the business (stockholder, shareholder)
- Share price must be equal and value at least 5 baht per share
- Stockholders can buy, sell, give or receive share as gifts or inherit them.
- Stockholders are entitled to all profits may be distributed (dividends)
- liability to the third parties is separate from individual liability of its shareholders
- liability of the shareholders is limited to the value of an individual shareholder's unpaid share capital

- also called company limited (co. Ltd.)
- consists of at least 3 establisher (promoter)
- formed through a process that leads to the registration of a Memorandum of Association (Articles of Incorporation)
- Share are not sold on public market
- Shareholders enjoy limited liability, i.e. limited to the remaining unpaid amount, if any, of the par value of their shares



- a minimum of 15 promoters is required for the formation and registration of a public limited company
- there is no restriction on the transfer of shares
- can offer its shares to public - the stock of public company can be sold, bought and traded to anyone
- at least 50% of the directors must reside in Thailand; and board meetings must be held at least once every three months.

Initial Public Offering (IPO) – A private corporation who wishes to go “public” to raise additional capital and expand. The IPO is selling a corporation’s stock on public markets for the first time.

The procedure for forming a limited private company is as follows:

- (1) The promoters of the company must file a memorandum of association. The memorandum of association shall contain the following information:
 - the full name and intended location of the company,
 - the objectives of the company,
 - the intended location of the head office of the company,
 - a declaration of the shareholder’s limited liability,
 - the amount of share capital, and the value of each share,
 - the name, address, occupation, and signature of each of the promoters together with the number of shares subscribed to by each.
- (2) The official in charge of company registration will review the memorandum of association, Once satisfied, registration will be granted.
- (3) After registration, the company promoters will try to have all shares subscribed to. A private company is not permit to invite the public to subscribe to the shares.

- (4) After all shares have been subscribed, the promoters of the company must immediately call a general meeting of subscribers. This meeting is the **statutory meeting**, which should call :
 - (a) adoption of the company regulations,
 - (b) rectification of any transactions or expenses made by the company promoters during the formation of the company,
 - (c) determining and fixing the amount to be paid to promoters,
 - (d) fixing the number of preference shares, if any,
 - (e) fixing the number of ordinary and preference shares to be allocated as fully or partly paid up in place of money, and determining the amount at which they shall be considered as paid up, and
 - (f) appointment of directors and auditors and establishment of their respective power.
- (5) After the statutory meeting, the promoters shall hand the business over to the directors.
- (6) The directors shall cause the promoters and subscribers to pay up each share in money at an amount of not less than twenty-five percent of the par value.
- (7) When the above mentioned amount has been paid, and within three months of the statutory meeting, the directors must apply for registration of the company.

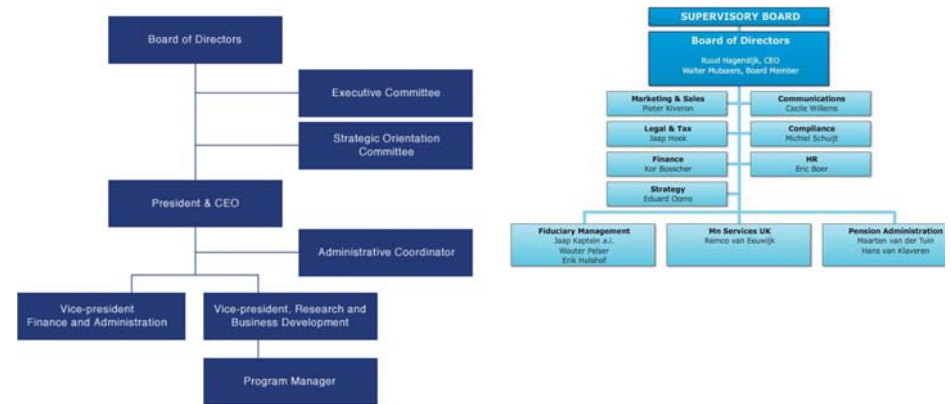
Stock – shares of a corporation that may be bought or sold

- **Preferred stock** – a special type of stock whose owners, though not generally having a say in running the company, have a claim to profits before other stockholders do.
- **Common Stock** – stock whose owners have voting rights in the corporation, yet do not receive preferential treatment regarding dividends.

Dividends – profits of a corporation that are distributed in the form of cash payments to stockholders

The company's business is to be managed by the **directors of the company** as appointed at the meeting of the shareholders

- **Inside Directors** – individuals who serve on the board and are employed by the corporation (usually executives of the corporation).
- **Outside Directors** – individuals who serve on the board who are not directly affiliated with the corporation (usually Executives of other corporations).
- A **supervisory board** is a group of individuals chosen by the stockholders of a company to promote their interests through the governance of the company and to hire and supervise the executive directors and CEO (two-tier board system e.g. Germany)



Name	Position
1. Mr. Z John Atanas	Chairman
2. Mr. Mark Eli Northcutt	Director
3. Mr. Mongkolnimit Auacherdkul	Director and Member of Performance Evaluation Committee
4. Mr. Yodpong Sutatham	Director
5. Mr. Adisak Jangkamolkulchai	Director
6. Mr. Somjate Saifon	Director
7. Ms. Ratrimani Pasiphol ⁽¹⁾	Director
8. Mr. Kurujit Nakornthap	Independent Director
9. Mr. Wattana Chantarasorn	Director and Member of Performance Evaluation Committee
10. Mr. Sompop Amatayakul	Independent Director and Chairman of Audit Committee
11. Mr. Smit Tiemprasert	Independent Director, Chairman of Performance Evaluation Committee and Member of Audit Committee
12. Ms. Wattanee Phanachet	Independent Director and Member of Audit Committee

- prepare their **financial statement** at least once in every 12 months and has at least one auditor and present it to the general meeting of the shareholder for the approval
- hold a general meeting within 6 months from the date it is registered as a juristic person and hold this meeting as least once in every 12 month
- give its share certificates to the shareholders and arrange shareholder registration book
- In case that there is any change in the registered items, the company has to register the new information to the registrar at the partnership/company registration office where the head office is situated

The company shall be dissolved in any of cases as follows:

- (1) when the meeting of shareholders resolved to dissolve the company with votes not less than three-fourths of the total number of votes of the shareholders attending the meeting and having the right to vote;
- (2) when the company becomes bankrupt;
- (3) when the court orders dissolution of the company under Section 155 and the order is final.

• Advantages:

- Limited liability
- Transfer of ownership
- Perpetual life
- External sources of funds
- Expansion potential

• Disadvantages:

- Double taxation
- Forming a corporation
- Disclosure of information
- Employee-owner separation

Joint-venture

The cooperation of two or more individuals or businesses in which each agrees to share profit, loss and control in a specific enterprise.

Merger – the combination of two companies (usually corporations) to form a new company

Acquisition – the purchase of one company by another, usually by buying its stock and/or assuming its debt.

Leveraged buyout (LBO) – A form of acquisition in which a group of investors borrows money from banks and other institutions to acquire a company (or a division of one) using the assets of the purchased company to guarantee repayment of the loan.

In the spring of 2005, **Porsche**, the small but then highly profitable sports car maker, kickstarted a gradual takeover of **VW**. Over the next four years, Porsche pursued a spectacular hunt for a company with 82 times its own sales, and came close to dominating the car giant.



However, **in the end Porsche failed**, having amassed a €10bn net debt trying to build its stake in VW. This month, VW reversed Porsche's manoeuvre when it spent €3.9bn (\$5.6bn) on a 49.9 per cent stake in the sports car maker.

Ultimately, the four-year drive to build its stake in VW brought Porsche to the verge of bankruptcy, reeling from the €10bn net debt load. **Porsche had to be bailed out** by the Emirate of Qatar, VW and its owning families.

Source: Financial times, Dec. 30, 2009



Initiative

Risk taking

Persisting

Entrepreneurship

- A process of creating and managing a business to achieved desired objectives
- Many large business all began as small business based on the vision of their founders



Jeff Bezos founded Amazon.com, Inc. in 1994 and the site went online in 1995. The company was originally named Cadabra, Inc., but the name was changed when it was discovered that people sometimes heard the name as "Cadaver". The name Amazon.com was chosen because the Amazon River is one of the largest rivers in the world and so the name suggests large size, and also in part because it starts with "A" and therefore would show up near the beginning of alphabetical lists. Amazon.com started as an online bookstore, but soon diversified, selling almost everything.

The founder of IKEA, Ingvar Kamprad, was born in Småland, in the south of Sweden. He was raised on a farm, near the small village of Agunnaryd. Even as a young boy his entrepreneurial skills were showing. He started by selling matches to neighbors when he discovered that matches could be purchased inexpensively in bulk and resold at a lower price but still with a profit. From matches, he expanded to selling fish, Christmas tree decorations, seeds and later ball-point pens and pencils.

In 1943, when Ingvar was 17, his father gave him a gift for succeeding in his studies, he used this to establish his own business

which is selling the furniture.



Founded by Ittipan Kulpongvanich

His first business was selling the items on game-online. But as the popularity of the online-game decreased, he started doing something else.

His next idea was operating a franchise for chestnut. He later added others product line into his franchise and one of that is seaweed. But his business didn't run smooth at first, but he kept trying. Now his products has 70% of the market shares. He is a young millionaire.

Definition:

small business is any independently owned and operated business, not dominant in its competitive area, employing less than 500 people.

Definition from EU

An enterprise which employs fewer than 250 persons and has an annual turnover not exceeding EUR 50 million and/or an annual balance sheet total not exceeding EUR 43 million

According to Thai Law, SME is...

Type of business	Number of employees		Asset in million baht	
	Small	Middle	Small	medium
Production	Less than 50	51-200	Less than 50	51-200
Wholsalers	Less than 25	26-50	Less than 50	51-100
Retailers	Less than 15	16-30	Less than 30	31-60
Service	Less than 50	51-200	Less than 50	51-200

- ✓ 80% of all new jobs, annually, created by small business in the last 10 years
- ✓ boost domestic consume, reduce export
- ✓ Small businesses responsible for 37% of GDP
- ✓ Account for 44% of all sales in the country
- ✓ Initial of potential business
- ✓ Create value for domestic product and resources
- ✓ provide wide variety of quality products

Advantages

- Independence
- Cost
- Flexibility
- Focus (Market niche)
- Reputation

Disadvantages

- High stress level
- High failure rate (Roughly 90 % of all new business fail within the first 5 years)
- Undercapitalization (lack of funds)
- Managerial inexperience or incompetence
- Inability to cope with growth





- Failing to spend enough time researching the business idea to see if it's viable.
- Miscalculating market size, timing, ease of entry, and potential market share.
- Underestimating financial requirements and timing.
- Overprojecting sales volume and timing.
- Making cost projections that are too low.
- Hiring too many people and spending too much on offices and facilities.
- Lacking a contingency plan for a shortfall in expectations.
- Bringing in unnecessary partners.
- Hiring for convenience rather than skill requirements.
- Neglecting to manage the entire company as a whole.
- Accepting that it's "not possible" too easily rather than finding a way.
- Focusing too much on sales volume and company size rather than profit.
- Seeking confirmation of your actions rather than seeking the truth.
- Lacking simplicity in your vision.
- Lacking clarity of your long-term aim and business purpose.
- Lacking focus and identity.
- Lacking an exit strategy.

Source: John Osher, in Mark Henricks, "What Not to Do," *Entrepreneur*, February 2004, www.entrepreneur.com/article/0,4621,312661,00.html.