

UPDATE



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THAI FOOD LAWS OFFER STRONG PROTECTION FOR CONSUMERS

Contributed by: Angus Mitchell, Pavitra Sakulchaimongkol, Matthew Christensen, DFDL in Thailand

As consumers, we often do not think about the specific ingredients that go into the food that we purchase from retail markets. Instead, we assume that government agencies regulate and supervise the food production facilities to ensure that our food is manufactured under sanitary conditions, free from contaminants and properly labelled, provided us with complete and truthful information about what is contained inside the box, bag or jar.

Are these assumptions well-founded? Thailand has a number of articles of legislation that regulate the domestic food production industry as well as the import of food products; as consumers, this legislation should give us confidence in the purchases we make.

LICENSING

The Food Act, B.E. 2522 (1979) is the primary legislation that regulates the production, sale and imports of food in Thailand. Before being allowed to operate, a Food Producer Licence must be obtained from the Food and Drug Administration (FDA). A separate FDA licence must be obtained by food importers.

A number of restrictions that deal with sanitation and the prevention of food contamination must be adhered to by a food producer after receiving the FDA licence. Most are standard practice for any properly regulated food production facility anywhere in the world, such as those that address the hygiene of employees and maintenance of equipment.

In addition, employers must not hire workers who are suffering from drug addiction or alcoholism. Workers on food production lines must provide medical certificates confirming that they are not suffering from a proscribed list of diseases set out in the regulations. Food production facilities must provide their employees with annual medical examinations and issue medical certificates as evidence. The penalty for operating an unlicensed food production facility without FDA approval is a Baht 30,000 fine and/or imprisonment for up to three years.

In addition to FDA licensing, under the Public Health Act, B.E. 2535 (1992) food producers must also obtain a permit from the jurisdiction in which they intend to operate, because

they will be conducting a business that may be cause harm to consumers. Local officials are empowered to control the food production within their respective jurisdictions and can impose additional restrictions beyond those listed in the Act, as and when deemed necessary.

The permit to operate does not apply to the production of food in markets such as the a la carte sections of grocery stores, hawkers (i.e. street vendors), food produced in restaurants (which are regulated under a different Act) or food for household consumption. If it is found that the permit holder is in violation of one or more of the provisions of the Public Health Act, the administrative official has the right to suspend the permit to operate the food production facility for a "reasonable period" but not in excess of 15 days.

FOOD PRODUCTION

Under the Food Act, the FDA will conduct annual inspections of food production facilities to ensure full compliance with the law. These inspections are thorough and detailed to the



level that even the recipes of the food products being manufactured are tested for ingredients. Food production facilities are required to obtain a certificate of approval from the FDA for each recipe which they intend to mass produce. The recipe certification also applies to imported food.

If a manufacturer is found to have altered any of its recipes without FDA authorisation, the responsible persons could face up to two years' imprisonment and a potential suspension or loss of their food production licences. In addition, administrative authorities in the jurisdiction where the facility is located are empowered to conduct health inspections as necessary under the Public Health Act.

Genetically modified foods (GMOs) are a contentious issue worldwide due to their generally negative image as "frankencrops" and that the technology is so "state-of-the-art" that the side effects of eating such foods are still unknown. Germany, together with the rest of the European Union, upholds some of the most stringent GMO laws found anywhere in the world. The German courts even struck down a GMO-related lawsuit filed by Monsanto against the German Government; a rare loss for Monsanto.

The debate over GMO products has not yet made it to Thailand for one main reason – under Sections 5 and 6(8) of the Food Act, it is illegal to produce, import or sell genetically modified foods in Thailand. The penalty for doing so is between six months and two years imprisonment, and/or a hefty fine.

LABELLING

The labelling of food is regulated by both the

Food Act and the Consumer Protection Act B.E. 2522 (1979). Labels must be approved by the FDA prior to use, and must include manufacturer contact information, and the product registration number. Labels must be in the Thai language and must contain truthful statements about the material facts concerning the goods. They cannot contain any wording that may mislead the consumer as to the contents of the product.

Required information about the contents includes price, quantity, usage, recommendations, caution, manufacturing date and expiry date. Failure to provide any of this information, or the inclusion of false or misleading information, can result in a financial penalty of up to Baht 100,000 and/or imprisonment not exceeding six months.

A second "nutrition label" is also required under the Food Act for specific other food products, such that manufacturers of these products are required to display certain nutritional information including the servings per package and "Recommended Daily Dietary Allowances for Healthy Thais". In addition, the phrase "Should eat less and exercise for better health" must be stated on the food label in bold text and in a

colour that contrasts with the label.

DFDL, a full-service law firm, established a permanent presence in Bangkok in November 2005 to better support its growing client base in Thailand, especially related to Thai-based financial institutions and businesses investing in Cambodia, the Lao People's Democratic Republic, Viet Nam, South Asia and beyond. Since then, it has expanded and established a thriving real estate practice with offices in Samui and Phuket; a corporate finance practice group advising borrowers and lenders on raising funds; and a labour law practice group.

Contact details:

Email:

Angus Mitchell - angus.mitchell@dfdl.com

Pavitra Sakulchaimongkol - pavitra@dfdl.com

Matthew Christensen - matthew.c@dfdl.com

