

# How to do business in Thailand

## Procedures for Establishing a Company

### 1. Company Register

Company promoters are responsible for registering the company with the Ministry of Commerce (MOC), must be individuals (not juristic persons) who are 20 years of age or older. There must be a minimum of 3 promoters for a private limited company and at least 15 promoters for a public limited company.

If the company falls under the definite of "Foreign" (as defined in the Foreign Business Act - FBA), it will normally be required to obtain Cabinet approval or a Foreign Business License prior to commencing operations.

### 2. Registration Process

#### 2.1 Corporate Name Reservation

To reserve a name, the promoter is required to submit a signed Name Reservation Form to the Department Development of the MOC, where the office will be located and to supply the requested company name together with two alternative names. The register will then examine the application in order to ensure that :

- a) No similar company names have previously been reserved ; and
- b) The names do not violate any ministerial rules.

The process can normally be completed within 2 days. Once the name is approved, the corporate name reservation is valid for 30 days, with no extensions.

#### 2.2 Filling a Memorandum of Association

After the name reservation has been approved, the company's Memorandum of Association (MOA) must then be submitted. The MOA must include the name of the company, the province where the company will be located, the company's business objectives, the capital to be registered, and the names of the promoters. The capital information must include the number of shares and their par value. At the formation step, the authorized capital, although partly paid, must all be issued. Although there are no minimum capital requirements, the amount of capital should be respectable and adequate for the intended business operation. However, if the company falls under the definition of a foreign company, the following rules supply;

- a) if the company engages in activities specified in the FBA, its minimum registered capital would be the greater of 25% of the company's average per years expenses for its first three years of operation and 3 million baht fully paid up.

- b) If the company does not engage in activities specified in the FBA, its minimum registered capital would be 2 million baht fully paid up. If the company is to employ foreigners, other minimum registered capital requirements are also apply.

Then a statutory is called to elect the Board of Director and an auditor is appointed.

### 2.3 Registration

Within 3 months of the date of the statutory meeting, the directors must submit the application to establish the company. During the registration process, the promoters will be required to supply the name, license number, and the remuneration of the auditor the company is planning to hire.

### 2.4 Registering for Tax Documents.

Companies liable for income tax must obtain a tax ID card and number from the Revenue Department within 60 days of incorporation or the start of operations. Companies that have turnover in excess 1.2 million baht must also register for VAT with the Revenue Department within 30 days of the date of annual turnover exceeded that threshold.

## Accounting and Financial reporting Requirements

### 1.Books of Accounts and Statutory Records.

Companies must keep books and follow accounting procedures as specified in the Civil and Commercial Code, the Revenue Code, and the Accounts Act. Documents may be prepared in any language, provided that a Thai translation is attached.

### 2.Accounting

Companies should close accounts every 12 months.

### 3.Reporting Requirements

All juristic companies, partnerships, branches of foreign companies, and joint ventures are required to prepare a financial statement for each accounting period. The financial statement must be audited by and subjected to the opinion of a certified auditor, with the exception of the financial statement of a registered partnership established under Thai Law.

## Types of Business Organizations

### 1. Partnerships

According to the Civil and Commerce Code (CCC), partnerships can be divided into 2 types:

1) Ordinary Partnerships

All the partnerships are jointly and wholly liable for all obligations of the partnership.

2) Limited Partnerships

One or more partners whose individual liability is limited to the amount of capital contributed to the partnership, or one or more partners who are jointly and wholly unlimitedly liable for all the obligations of the partnership.

### 2. Limited Companies

#### 2.1 Private Limited Companies (governed by the Civil and Commerce Code)

Limited companies are managed by a board of directors in accordance with the company's charter and by-laws. All shares must be subscribed to, and at least 25% of the subscribed shares must be paid up. Both common and preferred shares of stock may be issued, but all shares must have voting rights. Thai law prohibits the issuance of shares with a par value of less than five baht. Treasury shares are prohibited.

A minimum of 3 shareholders is required at all time. A private limited company may be wholly owned by foreigners. However, in those activities reserved for Thai nationals, foreigner participation is generally allowed up to a maximum of 49%.

#### 2.2 Public Limited Companies (governed by the Public Limited Company Act)

The rules and regulation concerning the procedure of offering shares to the public is under the control of the Securities and Exchange Commission (SEC). All companies wishing to list their shares on the Stock Exchange of Thailand (SET) must obtain the approval of and file disclosure documents with the SEC, and then obtain SET approval to list their shares.

There is no restriction on the transfer of shares (except to satisfy statutory or policy ceiling on foreign ownership); director's proxies are not allowed; circular board resolutions are not allowed; directors are elected by cumulative voting (unless the MOA provides otherwise); at least 50% of the directors must reside in Thailand. A minimum of 15 promoters is required for the formation and registration of a public limited company, and the promoters must hold their shares for a minimum of 2 years before they can be transferred. The Board of Directors must have minimum 5 members, at least half of whom are Thai nationals.

### 3. Joint Ventures

#### 3.1 Branches of Foreign Companies

There is no special requirement for the foreign companies to register their branches in order to do business in Thailand. However, most business activities fall within the scope of one or more laws or regulations which require special registration. The branch should be part of the parent company and therefore the parent retains legal liability for contracts and for tortuous acts done. A branch is considered a permanent establishment, and its revenue is subjected to Thai tax. A condition for approval of a Foreign Business License for a branch of a foreign corporation is that minimum capital amounting to no less than 5 million baht be brought onto Thailand within 4 years start-up.

#### 3.2 Representative Offices of Foreign Companies

These representative offices cannot engage in any profit-seeking or profit-making enterprise. The scope of the activities must be limited to approved activities, otherwise significant Thai tax liabilities may arise. In addition, the representative office cannot act on behalf of third persons.

##### Approved Representative Office Activities :

- a) The finding of sources of purchase of goods or services in Thailand for the head office.
- b) The checking and controlling of the quality and quantity of goods purchased or hired by the head office for manufacturing in Thailand.
- c) The giving of advice on various aspects concerning goods of the head office sold to agents or consumers in Thailand.
- d) The dissemination of information concerning new goods or service of the head office.
- e) The report of movements of business in Thailand to the head office.

Thus, a representative office which undertakes the approved activities is not subjected to Thai taxation. It is understood that such a representative office may receive a subsidy from the head office to meet expenses in Thailand.

Even though they are not subject to taxation in Thailand, all representative offices are still required to obtain a Corporate Tax Identification number and submit income tax returns and audited financial statement to the Revenue Department and the Department of Business Development.

There are 3 types of representative offices that require licensing :

- 1) Finance, security, and credit financier offices
- 2) Foreign bank offices
- 3) International business offices

## 4.Regional Operating Headquarters (ROH)

A Regional Operating Headquarters (ROH) is a juristic company or partnership organized under Thai law to provide managerial, technical, or other supporting services (see below) to its associated companies or foreign branches.

### Supporting Services

- General administration, business planning and coordination
- Procurement of raw materials and components
- Research and development
- Technical support
- Marketing control and sales promotion planning
- Training and personal management
- Corporate financial advisory services
- Economic or investment research and analysis
- Credit control and administration
- Any other services stipulated by the Director-General of the Revenue department

For further information please see [www.boi.go.th](http://www.boi.go.th)