



## **Business Structures In Thailand**

Below is a summary of the various vehicles through which business may be conducted in Thailand as well as the basic fee schedule in relation to the setting up of such vehicles.

It should be noted that The Foreign Business Act of 1999 (“the Act”), which became effective on March 4, 2000, repealed and replaced the 1972 National Executive Council Announcement 281, better known as the Alien Business Law. The Act provides a definition of “alien” and identifies the scope of foreign participation in business in Thailand.

For business purposes an “**Alien**” is defined as any of the following:

- A natural person who is not of Thai nationality;
- A juristic entity that is not registered in Thailand;
- A juristic entity incorporated in Thailand with foreign ownership accounting for one-half or more of the total number of shares and/or registered capital;
- A limited partnership or ordinary registered partnership whose managing partner or manager is a foreigner.

## **Forms of Business Organizations**

The principal forms of business organizations under Thai law are sole proprietorship, partnership, limited company, and public limited company. In addition, branches of foreign corporations are also recognized. Representative offices and regional offices, which were recognized by the Regulations of the Prime Minister’s Office announced before the promulgation of the Act, are presently deemed as service activities under List 3, item 21, of the Act. Thus, obtaining an alien business license is a requirement prior to starting activities.

### **• Sole Proprietorship**

In a sole proprietorship, all of the proprietor’s assets (business and personal) are subject to attachment or any other legal action, whether connected to the business or not. Registration is made at the Revenue Department, where the sole proprietor must acquire a taxpayer number. Some sole proprietorships are required to obtain a “Commercial Registration Certificate” from the CRD.

### **• Partnerships**

In Thailand, three forms of partnerships are permitted: (1) unregistered ordinary partnership, (2) registered ordinary partnership, or (3) limited partnership. Although the liabilities attached to the partners vary in these different forms of partnership, the general rules governing all types of partnerships are similar. Under the Civil and Commercial Code (“CCC”), a partnership is defined as a contract whereby two or more persons agree to unite for a common undertaking with a view to share the profits.



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### • **Limited Company**

Under Thai law, there are two types of limited companies: (1) the limited PRIVATE company and (2) the limited PUBLIC company.

Commonly, those desiring a more permanent business in Thailand opt for a private limited company which is governed by the CCC. Shareholders' liability is limited to the remaining, if any, amount unpaid on the shares respectively held by each shareholder. Subject to foreign ownership restrictions, all shareholders may be foreigners. The Board of Directors manages a limited company in accordance with the law and the company's Articles of Association. The board is under the control of the shareholders' assembly.

A public limited company, governed by the Limited Public Company Act B.E. 2535 (A.D.1992), is a company that is established with the purpose of procuring investment from the public in general by the offering of its shares. The rules and regulations concerning the procedures for offering shares for sale to the public are found in the Securities and Exchange Act B.E. 2535 (AD 1992) under the control of the Securities and Exchange Commission.

The procedure for incorporating a public limited company is similar to that of a private limited company in registration requirements and shareholders liability; however, some differences exist. A public limited company must, for example, have at least fifteen natural persons as promoters who are 20 years of age or over and at least five directors not less than half of who must reside in Thailand. Directors of a public limited company are subject to greater duties and responsibilities than those of a private limited company.

A private limited company may be transformed to a public limited company through a special resolution of the shareholders as stipulated by the CCC.

### • **Representative Office**

A representative office is the office in Thailand of a foreign company engaged in the business of international trading.

The representative office of an overseas company may engage only in the following activities after obtaining specific approval by the authorities:

- Finding suppliers of goods or services in Thailand for the head office abroad;
- Checking and controlling the quality and quantity of goods purchased or hired by the head office for manufacturing purposes in Thailand;
- Providing advice on various aspects of goods sold by its head office to agents, distributors and/or customers in Thailand;
- Providing information to interested persons in Thailand concerning goods or services of the head office; and reporting to the head office on business movements in Thailand.

The activities of a representative office are restricted. A fundamental premise is that the office cannot earn income as a business enterprise in Thailand, buy or sell goods on behalf of the head office, or render any service to any person or juristic person in



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Thailand. Such a representative office is deemed to receive a subsidy from the head office to meet its expenses in Thailand.

- **Regional Office**

A regional office is defined as a regional office of a multinational company. The scope of operations of a regional office is as follows:

- Perform the duties of contacting, coordinating the work of, and supervising the operations of the branches or affiliated companies located in the same region on behalf of the head office;
- Provide advisory services and management services;
- Personnel training and development;
- Financial management;
- Marketing supervision and sales promotion planning; and
- Product development and research and development services.

In conducting such activities, a regional office is subject to the same fundamental restrictions applicable to a representative office.

- **Branch Office**

A foreign company that plans to conduct business on its own in Thailand, such as a contract project, usually establishes a branch office to undertake the project.

There is no special registration requirement for the establishment of branches of foreign companies to do business in Thailand. However, most business activities fall within the scope of one or more laws or regulations which require special regulation or license, e.g., VAT, taxpayer identification card, Commercial Registration Certificate, Foreign Business License, etc., either before or after the commencement of the activities. Foreign business establishments must, therefore, follow the generally applicable procedures.



## **Setting Up A Private Limited Company In Thailand**

### **Incorporation of a Company**

Under Thai law, a company is a legal entity and can be wholly owned or majority Thai owned, depending on the nature of the business the company wishes to conduct. It is, however, a requirement under Thai law that all companies incorporated in Thailand must have at least 3 shareholders.

The Foreign Business Act 1999 in Thailand regulates the types of businesses foreigners can conduct in Thailand. For categories of businesses which foreigners are allowed, a Thai company can be incorporated with 100% foreign shareholding. For categories of business which are prohibited to foreigners, a company engaging in such business must be a Thai incorporation company with a minimum of 3 shareholders of which there is at least 1 Thai shareholders holding at least 51% of the shares in the company.

There must be at least 3 persons acting as promoters in setting up the Thailand company.

The promoters must have the following qualifications:

- (1) Be ordinary person, not juristic person
- (2) Be at least 12 years old
- (3) Must reserve to buy at least 1 share

#### **• Reservation of Company Name**

There are various stages in the incorporation process. The first is the reservation of the name of the company. One of the promoters of the Thailand company must reserve the name of the new company. This application process is made at the Department of Commercial Businesses. Once approved, the reserved name is valid for a period of 30 days. On expiry of that period, if the reserved name is not used, no extension of the validity period is permitted. A fresh application must be made instead.

#### **• Preparation of the Memorandum of Association (“MOA”)**

Once the name has been approved, the next step is for the 3 promoters of the Company to prepare the MOA. This document contains the following information:

- Approved reserved name;
- Registered address of the company;
- Company’s business objectives;
- Amount of registered capital, issued capital, par value per share and the liability of the shareholders;
- Names of the 3 promoters – please note that the promoters must be individuals.

For the registration of the MOA subsequently, a fee of Baht 50 per Baht 100,000 of registered capital is levied. The minimum fee payable is Baht 500, whilst the maximum fee is Baht 25,000. The minimum par value of a share under the Thai law is Baht 5. For example, a company with a registered capital of 2 million Baht would incur a MOA registration fee of 1000 Baht.



### • Statutory Meeting

Once the MOA is ready, a Statutory Meeting of the promoters is called.. The business of the Statutory Meeting consists mainly of the following:

- Adoption of the Articles of Association (“AA”)
- Ratification of the promoters’ accounts and expenses (if any) done or incurred during the formation of the company;
- Fixing the promoters’ remuneration (if any);
- Establishing preference shares (if any);
- Fixing the number of shares to be allocated as fully or partly paid up other than in money (if any) and determining the amount at which such shares shall be considered as paid up and;
- Appointing of the initial directors and auditors, and fixing the directors’ powers

Once the Statutory Meeting has been held, registration of the company must take place within 3 months. Further, the business of the company must also be handed over to the directors.

### • Directors

Thai law requires at least 1 director in the company. This director can either be a Thai national or a foreigner not residing in Thailand. However, under Thai law, foreign directors require work permits if they are executing any documents on behalf of the company. Generally, documents executed outside of Thailand require legalization from the Royal Thai Embassy before any Thai government agency accepts them.

### • Registration Fees

As regard to the registration fees for the incorporation of a company, a fee of Baht 500 per Baht 100,000 of paid up capital is payable. The minimum fee payable is Baht 5,000, whilst the maximum fee is Baht 250,000. We would recommend that the minimum paid up capital of the company be Baht 1,000,000 to take advantage of the minimum fee payable. Apart from the above mentioned registration fees, the following additional fees are payable:

- Certification fee Baht 20 (per item);
- Incorporation certification – Baht 50; and
- Document certification fee – Baht 50 per page

Please note that, for the purpose of facilitating the incorporation process, standard objects and articles are normally used. If you wish to alter the objects and/or articles in any manner, it is preferable to do so after the company has been incorporated. If altered objects and /or articles clauses are used in the incorporation process, there will be substantial time delay by the MOC to approve the amended clauses.



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- **Board Of Investment (“BOI”)**

The BOI is akin to the trade investment board of many other Asian countries. The BOI's role is to promote foreign investment in Thailand and to assist foreign investors in the same. The BOI has a list of businesses that they intend to promote in Thailand. Such businesses may enjoy tax and non-tax incentives. In the event that your business falls under the list of promoted businesses, we would assist you to liaise with the BOI before proceeding further. We are able to arrange for a meeting with the relevant officials to further discuss your plans as well as to advise you on how to structure your company in such a manner that it enjoys the maximum incentives offered by the BOI.

- **Our Scope of Work**

Our scope of work will include assisting you by providing advice on aspects of Thai law where necessary, registering the incorporation documents, assisting you to apply for BOI privileges and liaising with BOI when necessary. We will also assist you to acquire all the necessary licenses for your businesses. Examples of such licenses are the Private Education license and the Factory Operating license

In addition, within SBC Business Group, we also have a team of experienced accountants to assist you in tax planning, tax submission, auditing and accounts.