

FINDING THE RIGHT LEGAL STRUCTURE: SHOULD WE ESTABLISH BUSINESS IN THAILAND AS A COMPANY LIMITED, BRANCH, REPRESENTATIVE OFFICE OR REGIONAL OFFICE?



One of the first issues faced by prospective investors in Thailand is choosing the appropriate legal structure through which to operate your business. The most commonly used of the structures available are: company limited, branch, representative office, and regional office. When choosing the structure that is appropriate for your business you should consider a number of factors including:

- Capital requirements;
- The intended business activities to be pursued;
- Liability issues; and
- Tax treatment.

Company Limited

The private company limited structure (“company”) in Thailand is similar to a Limited Liability Company (LLC) structure in the US and is the most utilized type of

legal entity in Thailand.

A company is owned by shareholders (minimum three) and managed by directors (minimum one). The liability of each of the shareholders is generally limited to the total par value of their shares. The shareholders’ direct participation in company affairs is normally quite limited. It is the directors who are responsible for managing company affairs and who owe various fiduciary duties to the shareholders and the company (duty of care, duty of loyalty, etc.).

If a multinational wishes to establish a subsidiary in Thailand, it will likely do so as a privately held company. If individual investors wish to establish a stand-alone business to generate income in Thailand, they will most likely do so as a company limited.

Branch

In many ways the branch structure is very similar to that of the company limited. Both are allowed to earn income in Thailand, and similar tax rules apply to both. Also, the rules governing the activities of a branch are the same as the rules governing the activities of a foreign-held company limited.

Representative Office and Regional Office

The representative office and regional office structures are very different from those of the branch office and company limited. Unlike a branch or company limited, representative offices and regional offices are not allowed to earn income. Just as with a branch, representative offices and regional offices merely serve as extensions of their head offices overseas. They are not stand-alone legal entities. They are also strictly regulated to performing specific functions designated by statute on behalf of their head offices overseas.

The rules governing the investment required for a branch office are different from a representative office, and a regional office. The investment by the head office for the branch office must be at least 25% of the average estimated operating expenses for the first three years but in any event, not less than 3 million baht. For representative office and regional office, the minimum capital is 2 million baht.

Registration and Official Fees

There is no registration procedure required for a branch, representative office, or regional office. The official fees payable to the Ministry of Commerce (MOC) for a branch office are calculated based upon the amount of the head office's registered capital. The official fee is 5 baht for every 1,000 baht of the head office's registered capital, with the minimum fee payable 20,000 baht and the maximum fee payable 250,000 baht (a fraction of capital of 1,000 baht is treated as 1,000 baht).

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