

# **Doyle's Practice Guide to Thailand Business Law**

## **道乐泰国商业投资法律实用指南**

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### **Chapter 1**

#### **第一章**

### **Should Our Thailand Business be Established as a Company Limited, Branch, Representative Office or Regional Office?**

**我们的泰国业务应该设立有限公司、分公司、代表处或区域办事处吗？**

One of the first issues faced by prospective investors in Thailand is choosing the appropriate legal structure through which to operate their 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:

潜在投资者在泰国面临的首要问题之一是选择合适的法律架构来经营其业务。最常用的结构是：有限公司，分公司，代表处和区域办事处。在选择适合您业务的架构时，您应该考虑许多因素，包括：

- i. Capital requirements;  
资本要求；
- ii. The intended business activities to be pursued;  
预计开展的业务活动；
- iii. Liability issues;  
责任问题；
- iv. Tax treatment.  
税收待遇。

The chart on the next page compares these as well as other aspects of company limited, branch, representative office, and regional office.

下页图表将对以上问题以及有限公司，分公司，代表处和区域办事处的其他方面进行比较。

### Available Legal Structures – Comparison Chart

	COMPANY LIMITED	BRANCH	REPRESENTATIVE OFFICE	REGIONAL OFFICE
Minimum Investment Required	No minimum investment (unless foreign and engages in List 2 or List 3 activities)	At least 25% of the average estimated expenses for first 3 years but not less than 3 million baht	At least 2 million baht	At least 2 million baht
Shareholders	Yes, minimum 2	No	No	No
Activities	Generally any lawful activity (unless foreign)	Generally limited to activities stated in Foreign Business License	Limited to 5 activities specified by statute	Limited to 7 activities specified by statute
Income	Can receive	Can receive	Cannot receive	Cannot receive
Legal Liability	Separate liability	No separate liability	No separate liability	No separate liability
Tax Liability	Subject to normal tax rules	Subject to normal tax rules	Not subject to corporate income tax with exception of interest accrued on funds received from head office	Not subject to corporate income tax with exception of interest accrued on funds received from head office

### 现有法律结构 – 对比图

	有限公司	分公司	代表处	区域办事处
最低投资要求	无最低投资额 (除非是外国公司并从事清单 2 或清单 3 中的活动)	至少为前 3 年平均估计费用的 25%，但不少于 300 万泰铢	至少 200 万泰铢	至少 200 万泰铢
股东	有，至少 2 个	没有	没有	没有
活动范围	一般来说，任何合法活动 (外国除外)	一般仅限于《外国企业经营许可证》中规定的活动	仅限于法定的 5 项活动	仅限于法定的 7 项活动
收入	可接收	可接收	不可接收	不可接收
法律责任	独立责任	无独立责任	无独立责任	无独立责任
纳税责任	须遵守正常的税收规定	须遵守正常的税收规定	无需缴纳企业所得税，但从总部收到的资金所产生的利息除外	无需缴纳企业所得税，但从总部收到的资金所产生的利息除外

## Company Limited 有限公司

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.

泰国的私人有限公司（“公司”）架构类似于美国的有限责任公司（LLC）架构，是泰国使用最多的法人实体。

A company is owned by shareholders (minimum two) 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.).

公司由股东（至少两个）持有，并由董事（至少一个）管理。每个股东的责任通常限于其股份的总面值。股东直接参与公司事务通常有限。负责管理公司事务是董事，他们对股东和公司负有各种诚信责任（勤勉责任、忠诚责任等）。

Unlike a branch, representative office, or regional office, a company limited is treated under Thai law as a stand-alone legal entity.

与分公司，代表处和区域办事处不同，有限公司在泰国法律下被视为独立的法人实体。

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.

如果跨国公司希望在泰国设立子公司，通常作为私人企业来设立。如果个人投资者希望在泰国建立独立业务来产生收入，那么他们可以设立一家有限公司。

**EXAMPLE:** A multinational establishes a wholly owned subsidiary in Thailand as a company limited. That new company limited then executes a contract to supply auto parts, but fails to supply those parts. In this situation, the Thailand purchaser would generally be limited to suing the Thailand subsidiary for breach of contract, not its headquarters overseas.

例如：一家跨国公司在泰国建立一家全资子公司。该有限公司随后执行了一份供应汽车零部件的合同，但他们未能供应这些零部件。在这种情况下，泰国采购商通常只能起诉泰国子公司违反合同，而不是起诉其海外总公司。

## Branch, Representative Office, and Regional Office 分公司，代表处，和区域办事处

Often however foreign investors will not want to operate as a company limited. This is most likely to be true when a multinational company seeks to establish a presence in Thailand, but does not wish to establish a separate legal entity. For accounting, tax, and other reasons, the multinational company may instead want the Thailand office to function as part of the head office overseas. If that is the case, the multinational will normally choose to establish a representative office, branch office, or regional office, not a company limited.

然而很多时候，外国投资者不希望作为有限公司运营。当跨国公司在泰国寻求建立公司，但不希望建立单独的法律实体时，这种情况最有可能发生。出于会计，税收和其他原

因，跨国公司可能希望泰国办事处作为海外总公司的一部分。在这种情况下，跨国公司通常会选择设立代表处，**分公司**或区域办事处，而不是设立有限公司。

Thai law treats each of these three entities as extensions of the head office overseas, not as separate legal entities. The Thailand employees are employees of the overseas company.

泰国法律将这三个实体中的每一个都视为总公司在海外的扩展，而不是独立的法律实体。泰国员工即为海外公司的员工。

Thai law requires that each of these three structures must employ an office manager who resides in Thailand. Such office managers may be either Thai or foreign.

泰国法律要求这三个结构中的每一个必须雇用在泰国居住人作为的办公室经理。这样的办公室经理可以是泰国人也可以是外国人。

## 1. Branch

### 分公司

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.

在许多方面，**分公司**的架构与有限公司的架构非常相似。两者都可以在泰国营利，并且相似的税收规定也适用于两者。此外，**分公司**在管理活动方面与外资控股有限公司管理活动方式相同。

It is with issues concerning liability where the branch and company limited structures fundamentally differ. For a company limited, liability arising from the actions of the business or its employees is generally limited to the Thailand company only. The same is not true for a branch. Thai law treats a branch as merely an extension of its head office overseas.

**分公司**和有限公司根本上的不同在于责任问题。对于有限公司，由业务或其雇员的行为导致的责任通常仅限由在泰国的公司承担。而对于**分公司**则不是这样。泰国法律将**分公司**视为其总公司在海外的扩展。

**EXAMPLE:** Suppose that the multinational establishes a branch (instead of a company limited), and the branch enters into the same contract to supply auto parts and fails to perform. The Thailand purchaser could then sue the head office of the multinational directly.

例如：假设跨国公司建立了**分公司**（而不是有限公司），并且该**分公司**签订了相同的合同来供应汽车零部件而未能履行职责。泰国采购商可以直接起诉跨国公司的总公司。

## 2. Representative Office and Regional Office

### 代表处和区域办事处

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.

代表处和区域办事处的架构与分公司和有限公司的架构有很大的不同。与分公司或有限公司不同，代表处和区域办事处不得营利。与分支机构一样，代表处和区域办事处仅是海外总公司的扩展。它们不是独立的法人实体，受到严格监管，有代表其海外总公司执行规定的特定职能。

The activities of a representative office are limited to the following:

代表处的活动限于以下业务：

- i. Sourcing goods or services in Thailand for the head office;  
在泰国为总公司采购产品或服务；
- ii. Checking and controlling the quality and quantity of goods purchased or hired to be manufactured in Thailand by the head office;  
检查和控制总公司在泰国购买的或租用产品的质量和数量；
- iii. Giving advice concerning head office goods sold to agents or consumers;  
针对总公司出售给代理商或消费者的商品提供建议；
- iv. Propagation of information concerning new goods or services of the head office;  
宣传有关总公司新商品或服务的信息；
- v. Reporting to the head office on business trends in Thailand.  
向总公司报告泰国的业务趋势。

The activities of a regional office are limited to the following:

区域办事处的活动限于以下业务：

- i. Communicating, coordinating and directing, on behalf of the head office, the operation of branches and affiliates that are located in the region;  
代表总公司沟通、协调和指导该地区分公司和分支机构的运作；
- ii. Providing services in consulting and management;  
提供咨询和管理服务；
- iii. Training and personnel development;  
培训和人事发展；
- iv. Financial management;  
财务管理；
- v. Marketing control and sales promotion planning;  
营销控制和促销计划；
- vi. Product development;  
产品开发；
- vii. Services in research and development.  
研发服务。

It is also required that the regional office's head office must have at least one other branch or affiliate in the Asia region.

还要求区域办事处的总公司必须在亚洲地区至少有一个其他分公司或分支机构附属。

The following are some of the specific restrictions applicable to both representative offices and regional offices:

以下是适用于代表处和区域办事处的一些具体限制：

- i. Non revenue-generating activities only;

仅限非创收活动；

ii. No authority to accept purchase orders, make offers to sell, or negotiate to carry out business with individuals or businesses in the country where its head office is located;

无权接受采购订单、提出销售要约或与总部所在国的个人或企业洽谈业务；

iii. All expenditures incurred must be borne by the head office;

所有支出必须由总部承担；

iv. Not subject to corporate income tax, with the exception of interest accrued from funds received from the head office.

无需缴纳公司所得税，但从总公司收到的资金所产生的利息除外。

Appendix A contains a list of further prohibited activities for both representative offices and regional offices.

附录 A 载有代表处和区域办事处被禁止的其他活动清单。

## Capital Required

### 所需资金

The rules governing the amount of investment required for a company limited are presented in Chapters 2 and 3.

关于有限公司所需投资金额的规定详见第 2 章和第 3 章。

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.

对分公司投资的管理规定不同于代表处和区域办事处。总公司对分公司的投资必须至少达到前三年预估平均运营费用的 25%，但无论如何不得少于泰铢 300 万。对于代表处和区域办事处，最低资本为泰铢 200 万。

**EXAMPLE:** Suppose a Japanese company decides to establish a branch in Thailand. The Japanese head office estimates that the operating expenses of the branch for the first three years will be as follows:

例如：假设一家日本公司决定在泰国建立分公司。日本总公司估计，该分公司前三年的运营支出如下：

12 million baht (Year One)

泰铢 1200 万（第一年）

13 million baht (Year Two)

泰铢 1300 万（第二年）

14 million baht (Year Three)

泰铢 1400 万（第三年）

39 million baht total estimated expenses during first three years

泰铢 3900 万是前三个年度的总预计支出

39 million / 3 years = 13 million baht average per year

3900 万 / 3 年 = 平均每年泰铢 1300 万

13 million baht x 25% = 3.25 million baht minimum capital

泰铢 1300 万 x 25% = 泰铢 325 万的最低资本

Thai law also specifies a schedule as to when the capital must be remitted into Thailand by the head office. At least 25% of the total minimum capital must be remitted within the first three months of operation and an additional 25% within its first year of operation. A minimum of 25% must be remitted in Year Two and the remaining 25% within Year Three.

泰国法律还规定了总公司须将资本何时汇入泰国的时间表。至少 25% 的总最低资本必须在运营的前三个月汇出，并且在第一年内增额 25%。第二年必须汇出最低 25%，并且在第三年内支付剩余的 25%。

**EXAMPLE:** Using the branch in the above example, its minimum capital of 3.25 million baht would be required to be remitted into Thailand according to the following schedule:

例如：使用上例中的分公司，其最低资本为泰铢 325 万，需要按照以下时间表汇入泰国：

812,500 baht (25%) within first three months of operation

在运营前三个月内，泰铢 812,500 (25%)

812,500 baht (25%) within Year One

泰铢 812,500 (25%) 第一年内

812,500 baht (25%) within Year Two

泰铢 812,500 (25%) 第二年内

812,500 baht (25%) within Year Three

泰铢 812,500 (25%) 第三年内

3.25 million baht total to be remitted into Thailand within the first three years

总额泰铢 3.25 万在前三年内汇入泰国

The law also sets forth minimum requirements as to the capital required. As stated above, the minimum amount of investment capital required for a branch office is calculated based on the average of the estimated operating expenses for the office for its first three years of operation. The law specifies, however, that this figure may not be less than 3 million baht.

法律还规定了所需资本的最低要求。如上所述，分公司所需的最低投资资本是根据该办公室前三年运营期间预计运营费用的平均值来计算的。但是法律规定，这个数字不得少于总额 300 万。

**EXAMPLE:** Let's change the facts so that the head office in Japan estimates that the Thailand branch's operating expenses over the first three years are as follows:

例如：让我们换个案例，日本总公司计算泰国分公司在前三个年度的运营费用如下。

1 million baht (Year One)

泰铢 100 万 (第一年)

2 million baht (Year Two)

泰铢 200 万 (第二年)

3 million baht (Year Three)

泰铢 300 万 (第三年)

6 million baht total estimated expenses during first three years

泰铢 600 万是前三个年度的总预计支出

6 million baht / 3 years = 2 million baht average per year

泰铢 600 万 / 3 年 = 平均每年泰铢 200 万

However, because the three-year average (2 million baht) is below the minimum capital required (3 million baht) such figure would be adjusted up to 3 million baht. The head office would be required to remit such amount into Thailand according to the following schedule:

然而，由于三年平均值（泰铢 200 万）低于最低资本要求（泰铢 300 万），因此该数字应当被调整为最多泰铢 300 万。总公司应当需要将这笔资本按照要求汇入泰国的时间表如下：

750,000 baht (25%) within first three months of operation

泰铢 750,000（25%）在前三个月内

750,000 baht (25%) within Year One

泰铢 750,000（25%）第一年内

750,000 baht (25%) within Year Two

泰铢 750,000（25%）第二年内

750,000 baht (25%) within Year Three

泰铢 750,000（25%）第三年内

3 million baht total to be remitted into Thailand within the first three years

泰铢 300 万总额在前三年内汇入泰国

For each of the three types of office, the ratio of the business's investment capital to its total loans may not exceed seven to one.

对于这三种类型的办公架构中任意一种，公司的投资资本与总贷款的比率不得超过 7:1

。

**EXAMPLE:** If the business's capital is 10 million baht, the business's total loans may not exceed 70 million baht.

例如：如果企业的资本为泰铢 1000 万，则企业的贷款总额不得超过泰铢 7000 万。

## **Registration and Official Fees**

### **注册和官费**

The procedure to register a company limited is presented in Chapter 2.

我们将在第二章介绍注册有限公司的程序。

There is no registration procedure required for a branch, representative office, or regional office; however, each will be subject to the rules associated with operating as a foreign business (see Chapter 3).

分公司，代表处或区域办事处无需注册程序；然而都必须遵守有关运营外国公司相关规则（请参阅第 3 章）。

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).

付给商务部（MOC）建立分公司的官方费用是根据总公司的注册资本金额计算得出的。应付官方费用为每泰铢 1000 总公司的注册资本，支付泰铢 5，最低费用为泰铢 20,000，最高费用为泰铢 250,000（资本的一小分数将泰铢 1,000 被视为泰铢 1,000）。



**EXAMPLE:** A German company seeks to establish a branch office in Thailand. The German company has a registered capital equivalent to 8 million baht. The official fee payable to would be 40,000 baht.

例如：一家德国公司寻求在泰国建立一家分公司。这家德国公司的注册资本为泰铢 800 万。应支付的官方费用为 泰铢 40,000 。

There are no official fees payable to the MOC associated with the establishment of a representative office or regional office.

建立代表处或区域办事处则无需向商务部支付任何官费。

A company limited and a branch also may be required to obtain a VAT (Value Added Tax) Certificate, depending upon its activities.

有限公司和分公司也可能需要获得VAT（增值税）证书，取决于其活动。

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