



Setting Up a Branch Office in Thailand

April, 2018

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EXECUTIVE SUMMARY

This white paper entails information related to branch office setup in Thailand. Though, it doesn't provide an exhaustive study of the matter it deals with, it does intend to answer questions that are likely to arise, including the prevailing laws in Thailand related to branch office setup, its procedure and documents required.

INTRODUCTION

A branch office and its head office are treated as similar legal entity under the Thai law and must be registered with the Ministry of Commerce. Hence, companies, especially multinationals, willing to do business in Thailand without opening a limited company usually take to opening a branch office. Significantly, unlike a representative office, it is not limited to non-trading activities, which means they can generate income as much as possible.

Regarded as a permanent establishment of the foreign company in Thailand, a branch office is governed by the Foreign Business Act (FBA) B.E. 2542. This means that offices falling into the categories under the FBA need to obtain a Foreign Business License (FBL). However, a branch office will only be approved to those companies that will economically benefit the country.

The white paper further elaborates on the Foreign Business Act and how it impacts branch office setup in Thailand. Also, it explains how to establish a branch office in the country and other legal nitty gritty.

How the Foreign Business Act Impacts a Branch Office Operations in Thailand

As mentioned earlier, a branch office is controlled by the Foreign Business Act (FBA), it actually works to restrict foreigners, carrying out businesses in Thailand. Based on the business type, the potential foreign investors are either prohibited from functioning, or asked to obtain a license, or a certificate before business operation. The various types of businesses have been mentioned below annexed to the Foreign Business Act.

A 'Foreigner' under Act means;

- A natural person who is not a Thai national;
- A juristic person who is not registered in Thai land;
- A juristic person who is registered in Thailand, having half or even more of share capital held by any of the aforesaid person

The Business Lists under FBA;

Business List 1: Foreign businesses that are not permitted for operations due to some special reasons.

Business List 2: Foreign businesses, restricted because of national safety, culture, environment, security and natural resources. The foreigners must hold at least 60%-70% of the shares, if the cabinet has approved the assignment.

Business List 3: Includes businesses, where the Thais are not ready to compete with the foreigners. Therefore, these businesses can be conducted by the foreigners without any sort of restriction. However, a business operator should obtain a FBL, applied at the Department of Business Development.

In order to obtain FBL, a working capital of at least 25% of the average amount each year of the 3-year expenditure budget is required. Precisely, it should not be anywhere lesser than THB 3 million. However, the capital will be remitted in accordance with the below mentioned timeline;

- Amount not less than 25% of the capital brought in must be remitted in the 1st three months;
- Another 25% of the capital must be remitted within the 1st year;

- Another 25% of the capital must be remitted at the end of the 2nd year;
- Remaining 25% of the capital must be remitted at the end of the 3rd year

Taxes a Branch Office in Thailand is Liable to Pay

- Corporate income tax on its net profits
- Withholding tax on payments of income to the recipients
- Personal withholding tax on payments of income to the employees
- Specific business tax on certain kind of business income transactions
- Withholding tax on remittances
- Value Added Tax on sales of goods and services as well as on imports Stamp duty tax on various instruments

Understanding the Difference between a Branch Office and a Representative Office

A branch office is often mistaken by a representative office, which is not the case actually. They are quite different from each other. Let's see how;

Branch Office	Representative Office
Allowed to conduct a wide range of activity, like buy and sell goods, render services, sign contracts and build things.	Allowed to contact customers/clients and enter into contracts on behalf of the head office, but can't make sales.
It can; (a) Do everything that a representative office does. (b) Regularly buy and sell goods and services (c) Get involved in manufacturing, processing and construction like any other local company, provided Thai laws doesn't	It can; (a) Contact customers to introduce its head office to them (b) Research commercial information and provide the information to the head office (c) Do market research. (d) Market goods at trade fairs (e) Rent an office and employ staff (f) Enter into contracts with local

prohibit it doing.	clients/customers on behalf of the head office
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Documents Required to Set Up a Branch Office in Thailand

- Memorandum of Incorporation
- Articles of Association
- Affidavit of the Manager setting forth the following:
 - Name of the corporation
 - Date and number of Registration
 - Registered office address of the corporation;
 - Name, address, nationality, age of the director(s) plus the number of shares held
 - Authorized capital stock
 - Number of shares as well as its par value
 - Amount of paid up capital stock

How to Establish a Branch Office in Thailand

- Necessary documents should be notarized and certified by the Thai Embassy that should be submitted to the Commercial Registrar
- Next, the foreign business must get be registered with the Revenue Department
- Resident representative should be appointed to deal with the tax authorities
- A working capital of at least 3-5 million baht must be shown to establish a branch in Thailand

- Usually, it takes 4-5 weeks to complete the process, from collecting documents to obtaining certification from the Commercial Service Office. However, registration by the Thai government may take a few weeks to a few months.

Conclusion

Establishing a branch office in Thailand is definitely possible, but then the process is bureaucratic and a bit lengthy to some extent. So, based on the nature of business, foreign investors should establish a separate Thai company as that way it will be more efficient. Importantly, considering a separate taxation of the branch and its accounting requirements will make business operations easier.

About Konrad Legal

Konrad Legal's, a Bangkok-based law firm, business model is blueprinted to deal with challenging legal issues. The company offers their assistance in everything related to company formation, BOI registration, accounting services, import/export licenses, filing corporate income tax, trademark registration, preserving intellectual property to submitting mergers and acquisitions. Additionally, the services are further extended to family related assistance, obtaining immigration visa, solving property related matters and disputes and some miscellaneous services, including, transfer of power of attorney, notary services, and background check, etc.

Disclaimer

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How to Establish Branch Offices | Thailand Law. (2018). Thailand Law. Retrieved 3 April 2018, from <https://www.thailandlaw.org/how-to-establish-branch-offices.html>