

# **CHAPTER 1**

## **FORMING A COMPANY**

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### 1. Procedures for Establishing a Company

#### 1.1 Company Registration

##### 1.1.1 Promoters

Company promoters are responsible for registering the company with the Ministry of Commerce (MOC). The promoters must be individuals (not juristic persons). They must be available to sign documentation during the registration process. There must be a minimum of 3 promoters for a private limited company and at least 15 promoters for a public limited company.

The promoters of a private limited company must be 12 years of age or older; for a public limited company, the promoters must be 20 years of age or older.

Each promoter of a private limited company is required to be among the company's initial shareholders immediately after the company's registration and is required to hold a minimum of one share upon the company's registration. They are generally free to transfer those shares to existing shareholders or third parties, thereafter, if they wish. It is not required for the individuals serving as promoters to reside in Thailand.

The promoters of a public limited company must also be among the company's initial shareholders immediately after the company's registration. All promoters must subscribe for shares, which must be paid up in an aggregate amount equal to not less than five percent of the registered capital. Said shares may not be transferred before the expiration of 2 years from the date of the company's registration, unless specifically approved at a meeting of shareholders. Nevertheless, it is required that one-half of the individuals serving as promoters have their domicile in the Kingdom of Thailand.

Promoters' potential legal liability is generally limited to the par value of the shares they will hold after registration is completed. The promoters are also responsible for paying expenses associated with the company's registration. After registration, however, the company may choose to reimburse the promoters for those expenses.

##### 1.1.2 Timing

###### **For Private Limited Company**

The registration of the company can be accomplished on the same day as the registration of the Memorandum of Association provided that:

All registered shares have been subscribed for;

A statutory meeting is held to transact the business with the presence of all promoters and subscribers, and all promoters and subscribers have approved the transacted business;

The promoters have handed over the business to the directors; and

The payment of at least 25% of the total shares has been paid by the shareholders.

The company can apply for and obtain the company's tax ID card and register the Employer account under the Social Security Act with the MOC on the same day as the registration of the Company.

However, if the company does not wish to apply for the company's tax ID card or register the Employer account under the Social Security Act with the MOC on the same day as the registration of the Company, it can apply for the company's tax ID card and register the Employer account with the Revenue Department and the Social Security Office respectively later.

### **For Public Limited Company**

A Public Company Limited is required to register its Memorandum of Association with the MOC first, and, thus the company's registration cannot be done on the same day, as is the case for a private limited company. After the Memorandum of Association has been registered, the promoters must offer shares for sale to the public or to any person in accordance with the law on securities and stock exchange.

The promoters must submit to the Registrar a copy of the documents relating to the offer of shares for sale to the public, which shall be prepared and submitted to authorities under the law on securities and stock exchange, within 15 days of the date of submission to such authorities, in accordance with the rules, procedures and conditions prescribed by the Registrar.

The promoters shall convene the statutory meeting when the number of subscribed shares reaches the number specified in the prospectus or a public meeting, which must be not less than fifty percent of the number of shares specified in the Memorandum of Association, within 2 months of the date on which the number of subscribed shares reached the specified number but not later than 6 months from the date on which the Memorandum of Association was registered.

In the event it is impossible to call the statutory meeting within the specified time, if the promoters of the company wish to proceed further, they must apply for an extension of the period by providing the reason for the delay to the Registrar not less than 7 days in advance of the expiry date of such period. If the Registrar deems it expedient, an extension of between one and three months from the date ending such period may be granted.

If the statutory meeting could not be concluded within the period, the Memorandum of Association shall become invalid upon the lapse of such period and, within 14 days from the date on which the Memorandum of Association become invalid, the promoters shall return the payment for share subscription to the share subscribers.

After having received the payment on shares up to the number of all subscribed shares, the Board of Directors must apply to register the company within 3 months of the date of conclusion of the statutory meeting. The application must provide the following particulars:

- (1) The paid-up capital, the total amount of which must be specified;
- (2) The total number of shares sold;
- (3) The names, dates of birth, nationalities, and addresses of the directors;
- (4) The names and number of directors authorized to affix signatures on behalf of the company and any power limitations on directors that have been specified in the Articles of Association;
- (5) The location of the head office and branch offices (if any).

The company cannot apply for and obtain the company's tax ID card and register the Employer account under the Social Security Act with the MOC like a private limited company. Consequently, the company must apply for the company's tax ID card with the Revenue Department and register the Employer account with the Social Security Office directly.

*Note:*

*If the registered company falls under the definition of "foreign" (as defined in the Foreign Business Act (FBA)), after registration of the company, it will normally be required to obtain Cabinet approval, a Foreign Business License, or a Foreign Business Certificate, as the case may be, prior to commencing operations.*

### 1.1.3 Filings

For a private limited company, all documents associated with the company's registration must be submitted to the Registrar of the Department of Business Development of the MOC; or, if the company's location is to be situated outside of Bangkok, it must be submitted to the Office of Provincial Business Development in the province in which the company's business will be situated. For a public limited company, all documents associated with the company's registration must be submitted to the Registrar of the Department of Business Development of the MOC at the Central Registration office, Bangkok only, regardless of company's location.

All documents associated with the registration of the company's tax ID card (in cases where the company does not apply for the company's tax ID card with the MOC when registering the Company) and VAT certificate must be submitted to the Filing Office of the Revenue Department in Bangkok; or, if the company's location is to be situated outside of Bangkok, to the Provincial Revenue Office where the company's location will be situated. However, the Company either locates in Bangkok or outside of Bangkok can also apply for the company's tax ID card and VAT certificate through the website of the Revenue Department.

All documents associated with the registration of the Employer account under the Social Security Act (in cases where the company does not apply for the Employer account under the Social Security Act when registering the Company) must be submitted to the Filing Office of the Social Security Office in Bangkok; or, if the company's office is to be located outside of Bangkok, to the Provincial Social Security Office in the province in which the company's business will be situated.

## 1.2 Registration Process

### 1.2.1 Corporate Name Reservation

The first step of the company registration process is name reservation. To reserve a name, the company can either (1) submit a signed Name Reservation Form (one of the promoters is required to sign in such form) to the Department of Business Development of the MOC or (2) fill in a Name Reservation Form and submit it through the Department of Business Development's website.

The promoter is required to supply the requested company name together with two alternative names. The registrar 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.

If the applicant's intended name is in conflict with either of the above, that name will be rejected and the registrar will consider the alternative names submitted. This process can normally be completed within 2 to 3 working days. If all three names submitted are rejected, the applicant will be required to re-submit the form with 3 new names.

The registrar has considerable discretion with regard to the matter of company names. Many times, the first name or even the first two names are rejected due to the violation of one of the two rules stated above. Once the name is approved, the corporate name reservation is valid for 30 days, with no extensions. However, after the name has expired, the promoter can still re-apply for Name Reservation again and again if the name is still available.

### 1.2.2 Filing a Memorandum of Association

After the name reservation has been approved, the company must then submit its Memorandum of Association (MOA) to the Department of Business Development of the MOC. For a private limited company, the MOA must include the name of the company, the province where the company will be located, the scope of the company's business, 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.

For a public limited company, the MOA must at least include the name of the company, the purpose of the company to offer shares for sale to the public, the objective of the company (which must specify clearly categories of business), the registered capital including the type, number and value of shares, the province where the company will be located and the names, dates of birth, nationalities, and addresses of the promoters and the number of shares for which each of them has subscribed.

The official fee for registration of the MOA for a private limited company is 50 baht per 100,000 baht of registered capital. A fraction of 100,000 baht is regarded as 100,000 baht. The minimum fee is 500 baht and the maximum fee is 25,000 baht. For a public limited company, the official registration fee is 1,000 baht per 1,000,000 baht of registered capital. A fraction of 1,000,000 baht is regarded as 1,000,000 baht. The maximum fee is 50,000 baht. 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 "foreign" under the FBA, before commencing its business, the following rules shall be applied:

- If the company engages in activities specified in the FBA, its minimum registered capital would be greater than 25% of the estimated average annual operating expenses of the operation, calculated over 3 years, but not less than 3 million baht.
- If the company does not engage in activities specified in the FBA, its minimum registered capital would be 2 million baht.

If the company intends to employ foreigners, other minimum registered capital requirements may also be applied.

### 1.2.3 Convening a Statutory Meeting

Once the share structure has been defined, a statutory meeting is called, during which the following are determined:

- Adoption of the Articles of Association (by-laws).
- Ratification of any contracts entered into and any expenses incurred by the promoters in promoting the company.
- Fixing the amount of remuneration, if any, to be paid to the promoters.
- Fixing the number of preference shares, if any, to be issued, and the nature and extent of the preferential rights accruing to them.
- Fixing the number of ordinary shares or preference shares to be allotted as fully or partly paid-up otherwise than in money, if any, and the amount up to which they shall be considered as paid-up.
- Appointment of the initial director(s) and auditor(s) and determination of the respective powers of the directors.

After the statutory meeting is held, the promoters must hand over all businesses to the directors of the company.

#### **1.2.4 Registration**

Within 3 months of the date of the statutory meeting, the directors must submit the application to establish the company. If not registered within the specified period, the company's statutory meeting shall be voided and if the company wishes to register again, the promoters shall arrange the meeting for persons who reserve to buy the shares again.

During the registration process, the promoters will be required to supply the name, license number, and remuneration of the auditor whom the company is planning to hire. The company registration fee for a private limited company is 500 baht per 100,000 baht of registered capital. A fraction of 100,000 baht is regarded as 100,000 baht. The minimum fee is 5,000 baht and the maximum fee is 250,000 baht. For a public limited company, the company registration fee is 1,000 baht per 1,000,000 baht of registered capital. A fraction of 1,000,000 baht is regarded as 1,000,000 baht. The maximum fee is 250,000 baht.

For a private limited company, the directors shall then cause the promoters and subscribers to pay forthwith upon each share payable in money such amount, not less than 25%, as provided by the prospectus, notice, advertisement, or invitation. For a public limited company, each promoter and subscriber must pay 100% of their subscribed shares.

The company is then registered as a legal entity (or juristic person).

#### **1.2.5 Registering for Tax Documents**

A company liable for corporate income tax must obtain a tax ID card and number from the Revenue Department within 60 days of its date of incorporation or, in the case of a foreign company, from the date it begins carrying on business in Thailand. Companies that have turnover in excess of 1.8 million baht must also register for VAT with the Revenue Department within 30 days of the date the annual turnover exceeded that threshold.

#### **1.2.6 Registering for Employer account under the Social Security Act**

If the company has at least one employee, the company has a duty to register the Employer account under the Social Security Act with the Social Security Office within 30 days of the start of employment. The process for registration of the Employer account under the Social Security Act can normally be completed within 1 day provided that all required information and documents are fully submitted to the Social Security Office.

## **2. Reporting Requirements**

### **2.1 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. All accounting entries should be written in ink, typewritten, or printed. Specifically, Section 12 of the Accounts Act of 2000 provides rules on how accounts should be maintained:

"In keeping accounts, the person with the duty to keep accounts must hand over the documents required for making accounting entries to the bookkeeper correctly and completely, in order that the accounts so kept may show the results of operations, financial position according to facts and accounting standards."

## 2.2 Accounting Period

An accounting period must be 12 months. Unless the Articles of Association state otherwise, a newly established company should close accounts within 12 months of its registration. Thereafter, the accounts should be closed every 12 months. If a company wishes to change its accounting period, it must obtain written approval from the Director-General of the Revenue Department.

## 2.3 Reporting Requirements

All juristic companies, partnerships, branches of foreign companies, and joint ventures are required to prepare financial statements 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, whose total capital, assets, and income are not more than that prescribed in Ministerial Regulations. The performance record is to be certified by the company's auditor, approved by shareholders, and filed with the Commercial Registration Department of the MOC and with the Revenue Department of the Ministry of Finance (MOF).

For a private limited company, the director is responsible for arranging the annual meeting of shareholders to approve the company's audited financial statement within 4 months at the end of the fiscal year, and filing the audited statement and supporting documents, including a list of shareholders on the date of the meeting, to the Registrar no later than 1 month after the date of the shareholder meeting.

For a foreign company, i.e. branch office, representative office or regional office, and excluding joint ventures, the Manager of the branch office must submit a copy of the financial statement to the Registrar no later than 150 days after the end of the fiscal year. Approval of the shareholder meeting is not required.

For a public limited company, the director is responsible for arranging the annual meeting of shareholders to approve the audited financial statements of a company within 4 months at the end of the fiscal year. A copy of the audited financial statement and annual report, together with a copy of the minutes of the shareholder meeting approving the financial statement, should be certified by the director and submitted to the Registrar, along with a list of shareholders on the date of the meeting, no later than 1 month after approval at the shareholder's meeting. In addition, the company is required to publish the balance sheet for public information in a newspaper for a period of at least 1 day within 1 month of the date it was approved at the shareholder's meeting.

## 2.4 Accounting Principles

In general, the basic accounting principles practiced in the United States are accepted in Thailand, as are accounting methods and conventions sanctioned by law. The Institute of Certified Accountants and Auditors of Thailand is the authoritative group promoting the application of generally accepted accounting principles.

Any accounting method adopted by a company must be used consistently and may be changed only with approval of the Revenue Department. Certain accounting practices of note include:

*Depreciation:* The Revenue Code permits the use of varying depreciation rates according to the nature of the asset, which has the effect of depreciating the asset over a period that may be shorter than its estimated useful life. These maximum depreciation rates are not mandatory. A company may use a lower rate that approximates the estimated useful life of the asset. If a lower rate is used in the books of the accounts, the same rate must be used in the income tax return.

*Accounting for Pension Plans:* Contributions to a pension or provident fund are not deductible for tax purposes unless they are actually paid out to the employees, or if the fund is approved by the Revenue Department and managed by a licensed fund manager.

*Consolidation:* Local companies with either foreign or local subsidiaries are not required to consolidate their financial statements for tax and other government reporting purposes, except for listed companies, which must submit consolidated financial statements to the Securities and Exchange Commission of Thailand .

*Statutory Reserve:* A statutory reserve of at least 5% of annual net profit arising from the business must be appropriated by the company at each distribution of dividends until the reserve reaches at least 10% of the company's authorized capital.

*Stock Dividends:* Stock dividends are taxable as ordinary dividends and may be declared only if there is an approved increase in authorized capital. The law requires the authorized capital to be subscribed in full by the shareholders.

## **2.5 Auditing Requirements and Standards**

Audited financial statements of juristic entities (*i.e.* a limited company, registered partnership, branch, representative office, regional office of a foreign corporation, or joint venture) must be certified by an authorized auditor and be submitted to the Revenue Department and to the Commercial Registrar for each accounting year.

However, for a registered partnership with registered capital of less than five million baht, total revenue of no more than 30 million baht, and total assets of no more than 30 million baht, financial statement does not need to be certified by an authorized auditor.

Auditing practices conforming to international standards are, for the most part, recognized and practiced by authorized auditors in Thailand.

## **3. Types of Business Organizations**

Thailand recognizes three types of business organizations: partnerships, limited companies and joint ventures.

### **3.1 Partnerships**

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

- (1) Ordinary Partnerships
- (2) Limited Partnerships

#### **3.1.1 Ordinary Partnerships**

In an ordinary partnership, all the partners are jointly and wholly liable for all obligations of the partnership. An ordinary partnership may or may not register as a juristic person. Therefore, an ordinary partnership can be divided into 2 types:

- (1) Non-registered Ordinary Partnership – has no status as a juristic person and is treated, for tax purposes, as an individual.
- (2) Registered Ordinary Partnership – is registered with the Commercial Registrar as a juristic person and is taxed as a corporate entity.



### 3.1.2 Limited Partnerships

The limited partnerships must have 2 kinds of partners as follows:

- (1) One or more partners whose individual liability is limited to the amount of capital contributed to the partnership, and
- (2) One or more partners who are jointly and unlimitedly liable for all the obligations of the partnership.

The limited partnerships must be registered and are taxed as a corporate entity.

### 3.1.3 Partnership Registration

When two or more people agree to invest in one of the aforementioned types of partnership, the appointed managing partner is responsible for registering the partnership with the commercial registration office of the province that the head office of the partnership is located in. The limited partnerships must be only managed by a partner with unlimited liability. The fee for registering a partnership is 100 baht per 100,000 baht of registered capital. A fraction of 100,000 baht is regarded as 100,000 baht. The minimum fee is 1,000 baht and the maximum fee is 5,000 baht.

## 3.2 Limited Companies

There are two types of limited companies: private limited companies and public limited companies. The first is governed by the Civil and Commercial Code and the second is governed by the Public Limited Company Act.

### 3.2.1 Private Limited Companies

Private Limited Companies in Thailand have basic characteristics similar to those of Western corporations. A private limited company is formed through a process that leads to the registration of a Memorandum of Association (Articles of Incorporation) and Articles of Association (By-laws) as its constitutive documents.

The shareholders enjoy limited liability, *i.e.* limited to the remaining unpaid amount, if any, of the par value of their shares. The liability of the directors, however, may be unlimited if stipulated as such in the company's MOA.

The limited companies are managed by a board of directors in accordance with the company laws and its Articles of Association. In the board of directors' meeting, director's proxies and circular board resolution are not allowed.

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 three shareholders is required at all times. Under certain conditions, a private limited company may be wholly owned by foreigners. However, in those activities reserved for Thai nationals under the Foreign Business Act, foreigner participation is generally allowed up to a maximum of 49% capital shares. The registration fee for the MOA and establishing the company is 5,500 baht per million baht of registered capital.

The 49% capital shares limited in certain reserved businesses can be exceeded or exempted if a Foreign Business License is granted. If the desired business is unique, does not compete with Thai businesses, or involves dealings among members of an affiliated company, the chance of approval is more probable. Conditions, such as minimum capital, transfer of technology and reporting requirements, may be attached to Foreign Business Licenses.

### 3.2.2 Public Limited Companies

Subject to compliance with the prospectus, approval, and other requirements, public limited companies registered in Thailand may offer shares, debentures, and warrants to the public and may apply to have their securities listed on the Stock Exchange of Thailand (SET).

Public limited companies are governed by the Public Limited Company Act B.E. 2535 (A.D. 1992), as amended by Public Limited Company Act No. 2 B.E. 2544 (A.D. 2001) and Public Limited Company Act No. 3 B.E. 2551 (A.D. 2008). The rules and regulations concerning the procedure of offering shares to the public is governed by the Securities and Exchange Act B.E. 2535 (A.D. 1992) and the amendments thereto, under the control of the Securities and Exchange Commission (SEC). All companies wishing to list their shares on the SET must obtain the approval of and file disclosure documents with the SEC, and then obtain SET approval to list their shares.

For public limited companies, there is no restriction on the transfer of shares (except to satisfy statutory or policy ceilings 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) and the board of directors' meetings must be held at least once every 3 months. Directors' liabilities are substantially increased.

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, except with the approval of the shareholders at a meeting of shareholders. The board of directors must have a minimum of 5 members, at least half of whom must have a domicile in Thailand. Each share of the company shall be equal to value and be fully paid up.

Restrictions on share transfers are unlawful, with the exception of those protecting the rights and benefits of the company as allowed by law and those maintaining the Thai/foreigner shareholder ratio. Debentures may only be issued with the approval of three quarters of the voting shareholders. The company registration fee is 1,000 baht per million baht of registered capital.

The qualifications for independent directors of listed companies and securities companies that have initial public offerings were amended in April 2009, as follows:

- (1) At least one-third of the board's complement should be independent directors, and in any case, the number should not be fewer than 3. This will apply for listed companies' annual general shareholders' meetings from the year 2010 onwards. In the case of an IPO, the requirement for independent directors has to be complied with from 1 July 2008 onwards.
- (2) The independent director must not have any business or professional relationship with the head office, subsidiaries, associates, or jurist person in his own interest, whether directly or indirectly, as outlined in the Thai Securities and Exchange Commission Circular No. Kor Lor Tor Kor (Wor) 11/2552 Re: the Amendment of the Regulation regarding the independent director.

### **3.2.3 Scrutinization of Thai Shareholders in Limited Companies**

In 2006, the Commercial Registrar prescribed new rules for the registration of the private limited companies. The rules require that sources of investment by Thai nationals in the following two categories of new companies be scrutinized:

- (1) A company in which the foreigners hold between 40% and 50% of the shares.
- (2) A company in which the foreigners hold less than 40% of the shares, but a foreigner is an authorized director of the company.

All Thai shareholders must disclose the source of their funds to the MOC.

An application for the incorporation of a limited company must now be accompanied by at least one of the following documents evidencing the source of funds of each Thai shareholder:

- Copies of deposit passbooks or bank statements disclosing transactions over the past 6 months;
- A letter issued by a bank certifying the financial position of the shareholder;
- Copies of other documents evidencing the source of funds (i.e. loan documentation).

In addition, the MOC has issued internal guidelines in support of the rules, which set out the following matters:

- The amounts shown in the documents of each Thai shareholder evidencing the source of funds must equal or exceed the amount of funds invested by that Thai shareholder.
- The rules do not apply if a foreign national(s) has joint authority with a Thai national(s) to act on behalf of the limited company.
- Copies of deposit passbooks or bank statements disclosing transactions that are less than 6 months old may be submitted to the MOC provided that entries on at least 1 day identify a balance that is equal to or exceeds the funds invested by the relevant shareholder.

Thai shareholders must provide evidence of their sources of funds regardless of the value of their shares.

## **3.3 Other Forms of Corporate Presence**

### **3.3.1 Branches of Foreign Companies**

Foreign companies may carry out certain business in Thailand through a branch office. Branch offices are required to maintain accounts only relating to the branch in Thailand.

Having a branch office in Thailand, the foreign corporation could be exposed to civil, criminal and tax liability if the branch office violates any law in Thailand. The foreign head office must appoint at least one branch office manager to be in charge of operations in Thailand.

There is no special requirement for 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 that require special registration (e.g., VAT registration, taxpayer identification card, Commercial Registration Certificate, Foreign Business License, etc.), either before or after the commencement of activities. Therefore, foreign business establishment must follow generally accepted procedures.

It should be borne in mind that the branch is part of the parent company and therefore the parent retains legal liability for contracts, and for tortious acts done. For tax purposes, a branch is subject to

Thai corporate income tax at the regular 30% rate on income derived from its business operations in Thailand. It is important to clarify beforehand what constitutes income that is subject to Thai tax because the Revenue Department may consider revenue directly earned by the foreign head office from sources within Thailand to be subject to Thai tax. Therefore, for tax purposes, a branch office is required to apply for a taxpayer identification card and VAT certificate (if applicable) and to file annual corporate income tax returns with the Revenue Department.

A branch office of a foreign entity cannot carry out any reserved business without a Foreign Business License. It must apply for a Foreign Business License with the MOC first, and can operate in a reserved business only after the License has been issued. If the desired business is unique, does not compete with Thai businesses, or involves dealings among members of an affiliated company, the chance of approval is more probable. Conditions, such as minimum capital, transfer of technology and reporting requirements, may be attached to Foreign Business License. The minimum investment capital must be greater than 25% of the estimated average annual operating expenses of the operation calculated over 3 years, but not less than 3 million baht.

#### **Conditions to be complied with by the Branch Office after Obtaining Permission for Operation**

A Branch Office that is permitted to operate the business must comply with the following conditions:

- There must be the minimum capital to be remitted to Thailand for the commencement of business operation as stipulated by law. Details of remitting the minimum capital are as follows:
  - (1) First 25% of minimum investment within first 3 months;
  - (2) Another 25% of minimum investment within first 1 year;
  - (3) Another 25% of minimum investment within 2<sup>nd</sup> year; and
  - (4) Last 25% of minimum investment within 3<sup>rd</sup> year.
- The total of loans utilized in the permitted business operation must not exceed seven times the inward remitted funds for the permitted business operation;
  - (Loans mean the total liabilities of the business, notwithstanding the liabilities incurred by any form of transaction but excluding trade liabilities occurred from the ordinary course of business, such as, trade creditors, accrued expenses).
- At least one person of the responsible persons for operating the business in Thailand must have a domicile in Thailand;
  - (Domicile means the contactable residence in Thailand which can be the place of business, excluding temporary residence such as hotels).
- The document or evidence relating to the permitted business operation must be submitted when the official sent the summons or inquiry.
- There must be the preparation of account and financial statements to be submitted to the Department of Business Development.

#### **Fees for Branch Office**

Application fee (non-refundable) is 2,000 baht. If the application is approved, the government fee will be set at the rate of 5 baht for every 1,000 baht or fraction thereof of the registered capital of the parent company, with a minimum of 20,000 baht and a maximum of 250,000 baht. A fraction of 1,000 baht in capital is regarded as 1,000 baht.

### **3.3.2 Representative Offices of Foreign Companies**

The operation of Representative Office in Thailand in order to render the service to its head office or the affiliated company or the group company in foreign country is the operation of business under the business listed in List 3(21) attached to the Foreign Business Act B.E.2542 *i.e.* Other Service Businesses. If the foreigner wishes to operate such business, the permission by the Director-General, Business Development Department with the approval of the Foreign Business Committee is required.

The minimum investment capital must not be less than 25% of the estimated average annual operating expenses of the operation calculated over 3 years, but not less than 3 million baht (same as branch office).

The Foreign Business Operation Committee has determined the guidelines for approval as follows:

#### **Characteristic of Representative Office**

The Representative Office must have all 3 characteristics as follows:-

- (1) To be the juristic person established in accordance with the foreign law and established an office in Thailand in order to operate the service business to the head office or the affiliated company or the group company in foreign country only;
- (2) The Representative Office renders the service to the head office or the affiliated company or the group company without income from service, except for the supporting fund for expense of the Representative Office received from the head office;
- (3) The Representative Office has no authority to receive purchase orders or to offer for sale or to negotiate on business with any person or juristic person.

#### **Scope of Service of the Representative Office**

In operation of business as the Representative Office, the scope of service is permitted to be rendered in any of all 5 categories, depending upon the objectives and business characteristics of the Representative Office, as follows:

- To report the business movements in Thailand to the head office or affiliated company or the group company;
- To give advice on various aspects pertaining to the goods distributed by the head office or affiliated company or the group company to the distributors or the users in Thailand;
- To seek for the supply source of goods or services in Thailand for the head office or affiliated company or the group company;
- To inspect and control the quality and quantity of the goods that the head office or affiliated company or the group company purchased or hired to manufacture in Thailand;
- To disseminate the information in relation to the new goods or services of the head office or affiliated company or the group company.

If the representative office engages in other activities for which permission is not granted, such as buying or selling goods on behalf of the head office, it will be regarded as doing business in Thailand and may be subject to Thai taxation on all income received from Thailand. Also, the representative office may not act on behalf of third persons. Any such business or income-earning activities could amount to a violation of the conditions of the license to establish and operate a representative office, which in turn could result in revocation of that license.

A representative office that undertakes one or more of the approved activities in Thailand without rendering any service to any other person, and which refrains from prohibited activities, is not subject to Thai taxation. Such a representative office is understood to be receiving a subsidy from the head office to meet its expenses in Thailand. Gross receipts or revenues received by a representative office from the head office are not characterized as revenue to be included in the computation of juristic person income tax.

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 statements to the Revenue Department. They are also required to submit the same to the Department of Business Development.

#### **Conditions to be complied with by the Representative Office after Granted Permission to Operate**

A Representative Office that is permitted to operate the business must comply with the following conditions:

- There must be the minimum capital to be remitted to Thailand for the commencement of business operation as stipulated by law. Details of remitting the minimum capital are as following:
  - (1) First 25% of minimum investment within first 3 months;
  - (2) Another 25% of minimum investment within first 1 year;
  - (3) Another 25% of minimum investment within 2nd year; and
  - (4) Last 25% of minimum investment within 3<sup>rd</sup> year.
- The total of loans utilized in the permitted business operation must not exceed seven times the inward remitted funds for the permitted business operation;
  - (Loans mean the total liabilities of the business, notwithstanding the liabilities incurred by any form of transaction but excluding trade liabilities occurred from the ordinary course of business, such as, trade creditors, and accrued expenses).
- At least one person of the responsible persons for operating the business in Thailand must have a domicile in Thailand;
  - (Domicile means the contactable residence in Thailand which can be the place of business, excluding temporary residence such as hotels).
- The document or evidence relating to the permitted business operation must be submitted when the official sent the summons or inquiry.
- There must be the preparation of account and financial statements to be submitted to the Department of Business Development.

#### **Fees for Representative Office**

Application fee (non-refundable) is 2,000 baht. If the application is approved, the government fee will be set at the rate of 5 baht for every 1,000 baht or a fraction thereof of the registered capital of parent company, with a minimum of 20,000 baht and a maximum of 250,000 baht. A fraction of 1,000 baht in capital is regarded as 1,000 baht.

#### **Tax Position of Representative Office**

The representative office is required to obtain a corporate tax identification number and submit income tax returns and balance sheets, even if nil.

Individual aliens and all local staff are required to obtain taxpayer cards and pay personal income tax.

### 3.4 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 its domestic or foreign branches.

#### **Supporting Services**

- (1) General administration, business planning, and coordination,
- (2) Procurement of raw materials and components,
- (3) Research and development of products,
- (4) Supporting technical assistance,
- (5) Marketing control and sales promotion planning,
- (6) Human resource management and training in the region,
- (7) Corporate financial advisory services,
- (8) Economic and investment research and analysis,
- (9) Credit control and administration,
- (10) Any other services stipulated by the Director-General of the Revenue Department.

**Associated Company** A juristic company or partnership shall be regarded as an ROH's associated enterprise if:

#### **A. Shareholding basis:**

- i. A juristic company or partnership holding shares in the ROH worth not less than 25% of total capital; or
- ii. A juristic company or partnership in which the ROH is a partner or holds shares worth not less than 25% of total capital; or
- iii. A juristic company or partnership in which a juristic company or partnership under (i.) is a partner or holds shares worth not less than 25% of total capital.

#### **B. Control basis:**

- i. A juristic company or partnership that has the power to control or supervise the operation and management of the ROH; or
- ii. A juristic company or partnership that the ROH has the power to control or supervise the operation and management; or
- iii. A juristic partnership that a juristic company or partnership in (i.) has the power to control or supervise the operation and management.

**Incentives** The government provides tax breaks and incentives to attract foreign companies to set up in the Kingdom.

#### **A. Reductions/exemptions on Corporate Income Tax**

- i. **Business income** – ROH will be taxed at the reduced corporate rate of 10% on income derived from the provision of qualifying services to the ROH's associated companies or branches.
- ii. **Royalties** – Royalties received from associated companies or branches arising from Research and Development (R&D) work carried out in Thailand will be subject to tax at a reduced corporate rate of 10%. This benefit is extended to include Royalties received from a third party providing services to the ROH's branches or associated companies using the ROH's R&D.
- iii. **Interest** – Interest income derived from associated companies or branches on loans made by an ROH and extended to its associated companies or branches will be subject to tax at a reduced corporate rate of 10%.

- iv. **Dividends** – Dividends received by an ROH from associated companies will be exempt from tax. Dividends paid to companies incorporated outside of Thailand and which do not carry on business in Thailand will be exempt from tax.

**B. Accelerated Depreciation Allowances**

25% of asset value is allowed as an initial allowance and the remaining can be deducted for over 20 years for the purchase or acquisition of buildings used in carrying out the operations of the ROH.

**C. Expatriates**

- i. An expatriate who is assigned by the ROH to work outside of Thailand is exempt from personal income tax in Thailand for services outside of Thailand. However, the said income must not be borne by the ROH or its associated company in Thailand.
- ii. An expatriate who works for an ROH may choose to be subject to withholding tax at the rate of 15% for up to 4 years. By doing so, the expatriate is allowed to omit such income in the calculation of their annual personal income tax liability.

**Requirements** In order for an ROH to be eligible for tax benefits, it must fulfill the following conditions:

- The ROH must be a juristic company or partnership incorporated under Thai law;
- The ROH must have at least 10 million baht in paid-up capital on the closing date of any accounting period;
- The ROH must provide services to its overseas affiliated companies and/or branches in at least 3 countries excluding Thailand;
- At least half of the revenue generated by the ROH must be derived from service provided to its overseas affiliated companies and/or branches, although this requirement will be reduced to not less than one-third of the ROH's revenue for the first 3 years;
- The company must submit the notification to the Revenue Department; and
- Other requirements may be imposed by the Director-General of the Revenue Department.

**3.4.1 Updated ROH Policy**

In August 2010, the Thai government introduced attractive new incentives, aiming to supercharge the ROH program's popularity and make companies with regional headquarters here even more competitive.

Among the ROH incentives granted by the Revenue Department, Ministry of Finance, qualifying companies that set up regional operating headquarters in the country are entitled to a 10-year corporate income tax (CIT) rate of 0% on the portion of income derived from their overseas operations. A rate of just 10% is levied on income from their domestic operations.

A five-year extension on the corporate tax exemption is possible under certain conditions, meaning that the CIT benefits can be granted for a total of 15 years under the expanded program. In addition, a personal income tax rate of only 15% will be applied for 8 years on income earned by the company's expatriate employees in Thailand, if the income generated from services provided to overseas companies is at least 50% of the company's total revenue.

Another advantage of entering the program is that the dividends received by the ROH from its associated companies are tax exempt. Likewise, exemption applies to the dividends paid out of the ROH's net profits to its companies incorporated abroad and not carrying on business in Thailand.

Enhancements to the ROH scheme now also allow new and existing companies to qualify as a treasury center to further reduce their cost and improve convenience. As part of this, the Bank of Thailand is



making foreign currency dealings of regional headquarters easier. ROH companies can transfer, lend or borrow with their overseas affiliates in foreign currency rather than being restricted to convert into Thai baht. In addition, no approval is required for foreign currency deposit for money borrowed from domestic commercial banks, foreign deposit, and investment abroad, if the sum is under USD500 million.

The following table highlights the two ROH schemes available in Thailand.

	<b>Option #1 Current ROH Tax Regime</b>	<b>Option #2** New ROH Tax Regime</b>
1. Criteria	<ul style="list-style-type: none"> <li>• Paid-up capital of at least 10 million baht</li> <li>• Establishment of 3 associated companies/ branches in the 1st year</li> <li>• Income generated from overseas services <math>\geq</math>50% of total company income.</li> </ul>	<ul style="list-style-type: none"> <li>• Paid-up capital of at least 10 million baht</li> <li>• Establishment of associated companies/ branches establishment: in at least 1 country within the 1st year, at least 2 countries within the 3rd year, and at least 3 countries within the 5th year</li> <li>• Having staff working for ROH services and running business operation.</li> <li>• Having operating expenses <math>\geq</math>15 MB/year or investment spending <math>\geq</math>30 MB/year</li> <li>• By the end of 3rd year, having skilled staff of at least 75% of employees, and at least 5 employees, that receive remuneration of at least 2.5 MB/year</li> </ul>
2. Corporate Income Tax <ul style="list-style-type: none"> <li>• Overseas income</li> <li>• Local income</li> </ul>	<ul style="list-style-type: none"> <li>• 10% unlimited period</li> <li>• 10% unlimited period</li> </ul>	<ul style="list-style-type: none"> <li>• Exempt for 10 years*</li> <li>• 10% for 10 years*</li> </ul>
3. Dividends	Exempt	Exempt for 10 Years (If income generated from overseas services $\geq$ 50% of total company income)
4. Interest	10% unlimited period	10% for 10 Years* (If income generated from overseas services $\geq$ 50% of total company income)
5. Royalties	10% unlimited period	10% for 10 Years* (If income generated from overseas services $\geq$ 50% of total company income)
6. Personal Income Tax for each foreign employee	Flat rate of 15% for a period not more than 4 Years	Flat rate of 15% for a period not more than 8 years (If income generated from overseas services $\geq$ 50% of total company income) only for executive and experts position.
7. Accelerated Depreciation	Accelerated Ratio (25% of asset value in 20 years)	-
8. Notification Period	No time limit	Within 5 years from the date the relevant law becomes effective

\* Extension of 5 years if all criteria have been met and if the company's accumulated operating expenses exceed 150 million baht by the end of the 10th year.

\*\* Effective date published in Royal Gazette