



SETTING UP A BUSINESS IN THAILAND

*ALL NEEDED INFORMATION
AND USEFUL LINKS*

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WHY THAILAND

Thailand's Advantages

Gateway to Asia

Thailand enjoys a strategic location and serves as a gateway into the heart of Asia – home to what is today the largest growing economic market.

The country also offers convenient trade with China, India and the countries of the Association of Southeast Asian Nations (ASEAN), and easy access into the Greater Mekong sub-region, where newly emerging markets offer great business potential.

Hub of ASEAN

Thailand was one of the founding members of ASEAN and has been instrumental in the formation and development of the ASEAN Free Trade Area (AFTA). AFTA entered into force on 1 January 2010 for the six original ASEAN (ASEAN-6) members (Thailand, Singapore, Malaysia, Indonesia, Philippines, and Brunei) thereby reducing import duties to zero; the so-called CLMV countries (Cambodia, Laos, Myanmar and Vietnam) will follow suit in 2015.

Thailand is ideally located at the crossroads of Asia, with easy access to the region's dynamic markets, including its own booming domestic consumer market of 65.12 million people. Thailand has long been a proponent of free and fair trade and its attractiveness as a production base for leading international companies is enhanced by a number of free trade agreements, and Thailand is certain to be a beneficiary of the ASEAN Economic Community (AEC), which will enter into force at the start of 2016.

Social and political stability

Thailand is a foreigner friendly and welcoming Buddhist country. The country's form of government is a constitutional monarchy, with a high reverence for the Thai Monarchy, and devotion to the teachings of Buddhism. And although the vast majority of the people in Thailand are Buddhist, all religions are welcome, and His Majesty the King is the patron of all religions.

Growing economy

Economically, this country of 65.12 million people is characterized by steady growth, strong exports and a vibrant domestic consumer market. Abundant natural resources and a skilled and cost-effective work force help attract foreign investors, and enable them to prosper and develop industry in Thailand.

World-class infrastructure

In addition to a growing highway system that now connects not only every province in Thailand, but also to neighboring countries of Laos, Cambodia and Vietnam, Thailand also offers:

- 7 international airports
- Modern city-wide mass transit in Bangkok
- 3G/Wi-Fi and broadband access
- 6 deep sea ports and 2 international river ports, including containers, tank farms and liquid jetties

Thailand's development plans for 2012-2022 include a high speed rail network that will connect north, south, east and west of Thailand, as well as to southern China. The mass transit system in Bangkok is being expanded into the suburbs and air and marine transportation will be further strengthened to meet the pace of growing demand.

FDI policies

The country's well-defined investment policies focus on liberalization and encourage free trade. Foreign investments, especially those that contribute to the development of skills, technology and innovation are actively promoted by the government. Thailand consistently ranks among the most attractive investment locations in international surveys, and the World Bank's Ease of Doing Business 2016 report places Thailand as the 49th easiest country in the world and the second-ranked emerging economy in Southeast Asia in which to do business.

Likewise, the United Nations Conference on Trade and development (UNCTAD) ranks Thailand as the 8th most attractive host economy in the world for 2014-2016.

Government support and incentives

Thailand Board of Investment offers investors a range of tax incentives, support services and import duty exemptions or reductions to activities that meet national development objectives. Companies receiving investment promotion privileges from the Board of Investment are not subject to foreign equity restrictions in

the manufacturing sector, and there are no local content requirements nor export requirements, as Thailand's investment regime is in total compliance with WTO regulations.

The Board of Investment also coordinates the activity of the One-Stop Service Center for Visas and Work Permits, which enables foreign staff of BOI-promoted companies to obtain work permits and long-term visas within three hours or less, and administers the One Stop One Stop Investment Center to facilitate a full range of services and streamline investment procedures by bringing representatives from more than 20 government agencies under one roof.

In addition to the activities of the BOI, other government organizations, such as the Department of Export Promotion and international chambers of commerce, provide invaluable support and a host of other important services.

Long-established and newly emerging industries

With steady economic development and strong support industries, the country's industrial production has grown and diversified rapidly both in long-established and newly emerging industries.

The government has identified 15 activities that are classified as activities of special importance and benefit to the country: Economic forest plantations (except for eucalyptus); Creative product design and development centers; Manufacture of airframes, airframe parts and major aircraft appliances, e.g. engines, aircraft parts, propellers and avionics; Electronic design; Software; Production of electricity or steam power from waste or refuse-derived fuel; Energy Service Companies (ESCO); Industrial zones or technology industrial zones; Cloud services; Research & Development; Biotechnology; Engineering design; Scientific laboratories; Calibration services; Vocational training centers.

Projects in these activities will be granted corporate income tax exemption without being subject to a corporate income tax exemption cap.

Friendly and rich culture

Thailand has gained a well-deserved reputation throughout the world for its gracious hospitality. The friendliness of its people and the diverse nature of Thai culture make visitors feel safe and at home in Thailand.

Education and healthcare services

The education standards in Thailand are accepted by many international examining bodies, and a great number of international schools and colleges offer world-class education, while its universities are outstanding.

In terms of healthcare, the country has developed an excellent reputation globally, due to its internationally-certified doctors and medical staff, and modern facilities and equipment. It is so good that one of the fastest-rising tourism sectors is medical tourism, with international patients visiting Thailand to take advantage of Thailand's world-class and extremely affordable health care system.

Thailand's Rankings

http://www.boi.go.th/index.php?page=thailand_rankings

Macroeconomics of Thailand

<http://www.boi.go.th/index.php?page=macroeconomics>

OVERVIEW

As in most countries, there are three kinds of business organizations in Thailand:

Sole **proprietorships, partnerships, and limited companies.**

The most popular form of business organization among foreign investors is the private limited company.

Private limited companies require a minimum of three promoters and must file a memorandum of association, convene a statutory meeting, register the company, and obtain a company income tax identity card. They must also follow accounting procedures specified in the Civil and Commercial code, the Revenue Code and the Accounts Act.

A balance sheet must be prepared once a year and filed with the Department of Revenue and Commercial Registration.

In addition, companies are required to withhold income tax from the salary of all regular employees.

The Ministry of Industry administers The Factory Act, which governs **factory construction and operation**, as well as safety and pollution-control requirements.

In some cases, factories do not require licenses, in other instances the requirement is simply to notify officials in advance of start-up, and in some cases licenses are required prior to commencing operations. Licenses are valid for five years, and are renewable.

Thailand recognizes three kinds of **intellectual property** rights: patents, trademarks, and copyrights.

The Patent Act protects both inventions and product designs and pharmaceuticals. The Copyright Act protects literary, artistic works, and performance rights, by making it unlawful to reproduce or publish such works without the owner's permission. The Trademark Act governs registration of, and provides protection for, trademarks.

The Alien Occupation Law requires all foreigners working in Thailand to obtain a Work Permit prior to starting work in the Kingdom, except when they are applying under the Investment Promotion Law, in which case they have 30 days to apply.

Non-Immigrant visas provide the holder with eligibility to apply for a work permit, and allow the holder to work while the work permit application is being considered.

Through the links below, you can learn more about topics such as **industrial licensing, taxation, patents and trademarks, and the cost of doing business in Thailand.** You can also find out about the status of Thai **infrastructure**, including facilities such as airports, deep sea ports, and highways, and the availability of power, water and telecommunications.

In addition, there is a link to a page of statistics, which displays tables of utility, communications and labor costs, tax rates, information about air, sea, rail and road freight pricing, and information about availability and cost of land within industrial estates. Other charts and tables provide costs of establishing and running an office in Bangkok, and the results of a survey of expatriate living costs in Bangkok.

This page also contains information about industrial production of selected products in Thailand, tables breaking down Thai imports and exports by product and a table displaying interest rate movements for the past 5 years.

By the time you have finished visiting all these pages, you will have a complete picture about the business climate in Thailand.

Forming a Company

Types of Business Organizations

Thailand recognizes 3 types of business organizations: partnerships, limited companies and joint ventures.

Partnerships

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

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

Ordinary Partnerships

In an ordinary partnership, all the partners are jointly and wholly liable for all obligations of the partnership. Ordinary partners may contribute money, other property, or labor to the partnership. These partnerships may be registered or unregistered. 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.

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.

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. 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.

Limited Companies

There are 2 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.

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.

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.

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.

Other Forms of Corporate Presence

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 20% 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:

1. 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 year;
 - (3) Another 25% of minimum investment within second year; and
 - (4) Last 25% of minimum investment within third year.
2. 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.
3. 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.

4. The document or evidence relating to the permitted business operation must be submitted when the official sent the summons or inquiry.

5. 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.

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. 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. Renders services to the head office, affiliated company or group company without receiving income from service, except for funds to cover the expenses of the Representative Office that are 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 or all of the following 5 categories, depending upon the objectives and business characteristics of the Representative Office:

- Finding sources of goods or services in Thailand for the head office.

- Checking and controlling the quantity of goods purchased in Thailand by the head office.
- Providing advice and assistance concerning goods of the head office sold to agents or consumers in Thailand.
- Disseminating information concerning new goods or services of the head office.
- Reporting on business developments in Thailand to the head office

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:

1. 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 year;
 - (3) Another 25% of minimum investment within the second year; and
 - (4) Last 25% of minimum investment within the third year.
2. 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.
3. 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.

4. The document or evidence relating to the permitted business operation must be submitted when the official sent the summons or inquiry.

5. 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.

Procedures for Establishing a Company

Company Registration

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 three 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.

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:

- (1) All registered shares have been subscribed for;
- (2) 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;
- (3) The promoters have handed over the business to the directors; and
- (4) 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 two

months of the date on which the number of subscribed shares reached the specified number but not later than six 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 three 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.

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 (DBD) 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.

Registration Process

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 (http://www.dbd.go.th/dbdweb_en).

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 2-3 working days. If all three names submitted are rejected, the applicant will be required to re-submit the form with three 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.

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 Company's name (the same as the name reserved); the location of head office (located at which province); (3) objective of the company; registered capital must be divided into each share with the same value (each share's value must be at least 5 Baht); the name, address, age, occupation and number of shares that persons who start up the company reserve to buy the shares); and the name, address, age of two witnesses. 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; 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 25,000 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.

Convening a Statutory Meeting

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

- (1) The adoption of the regulations of the company, if any;
- (2) The ratification of any contracts entered into and any expenses incurred by the promoters in promoting the company.

- (3) The fixing of the amount, if any, to be paid to the promoters;
- (4) The fixing of the number of preference shares, if any, to be issued, and the nature and extent of the preferential rights accruing to them;
- (5) The fixing of 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;
- (6) The appointment of the first directors and auditors and the fixing of their respective powers;

Note: No resolutions of the statutory meeting are valid unless passed by a majority including at least one half of the total number of subscribers entitled to vote, and representing at least one half of the total number of shares to such subscribers.

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

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).

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.

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.

Reporting Requirements

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.”

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.

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 of 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 of 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.

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.

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 5 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.

International Headquarters (IHQ)

On 1 May 2015, Thailand introduced an International Headquarters (ITC) scheme to help boost Thailand's competitiveness and make Thailand the economic hub of Asia. The IHQ program replaces the Regional Operating Headquarters scheme that will expire on 15 November 2015.

Thailand defines **International Headquarters (IHQ)** as a company incorporated under Thai law that provides any of the following activities to their branches or “associated enterprises”, whether located in Thailand or overseas:

- (1) Managerial services or technical services
- (2) Supporting services engaged in:
 - 2.1. General management, business planning, and business coordination
 - 2.2. Procurement of raw materials and parts
 - 2.3. Research and development
 - 2.4. Technical support
 - 2.5. Marketing and sales promotion
 - 2.6. Human resource management and training
 - 2.7. Financial advisory services
 - 2.8. Economic and investment analysis and research

2.9. Credit management and control

2.10. Any other supporting services stipulated by the Director-General of the Revenue Department

(3) Financial management, including:

3.1. Financial management by corporate treasury centers approved under The Exchange Control Law.

3.2. Borrowing and lending in Thai Baht for the following cases:

3.2.1. Borrowing in Thai Baht from financial institutes in Thailand or associated enterprises in Thailand

3.2.2. Managing Thai Baht obtained from 3.1 or 3.2.1 by lending in Thai Baht to associated enterprises in Thailand

(4) International Trading Centers (ITC), which refers to companies incorporated under Thai law that purchase and sell goods, raw materials and parts or that provide international trading related services to juristic persons incorporated overseas. International trading related services include:

4.1. Sourcing of goods

4.2. Warehousing and inventory services prior to delivery

4.3. Packaging activities

4.4. Transportation of goods

4.5. Insurance on goods

4.6. Advisory, technical and training services on goods

4.7. Any other services stipulated by the Director General of the Revenue Department.

An associated enterprise refers to companies or juristic partnerships which are related to the International Headquarters, as follow:

1. A company or juristic partnership that holds direct or indirect shares in the International Headquarters of not less than 25% of total capital

2. A company or juristic partnership in which the International Headquarters is a shareholder or a partner with not less than 25% of total capital

3. A company or juristic partnership in which the company or juristic partnership specified in number 1 is a direct or an indirect shareholder or partner with not less than 25% of total capital

4. A company or juristic partnership which has the power to control or supervise the operation and management of the International Headquarters

5. A company or juristic partnership in which the International Headquarters has the power to control or supervise the operation and management

6. A company and juristic partnership in which the company or juristic partnership under number 4 has the power to control or supervise the operation and management.

Incentives offered by the Board of Investment (BOI)

- Permission to bring in skilled personnel and experts into the Kingdom to work in investment promoted activities.
- Permission to own land
- Exemption of import duty on machinery (Only machinery for R&D and training activities)
- Exemption of import duty on raw materials and parts for export purpose

Conditions to apply for privileges offered by the BOI

- Must supervise associated enterprises in foreign countries or its foreign branches in at least one country
- The paid-up registered capital must not be less than THB10 million

Incentives offered by the Revenue Department (RD)

Corporate Income Tax (CIT) for 15 accounting periods from the date of approval by the Director General of the Revenue Department

1. Revenue subject to corporate income tax exemption:

1.1 Revenue received from managerial services or technical services, supporting services, or financial management services to associated enterprises established in accordance with foreign laws.

1.2 Revenue on royalties received from associated enterprises established in accordance with foreign laws.

1.3 Dividends received from associated enterprises established in accordance with foreign laws.

1.4 Revenue on capital gains received from associated enterprises established in accordance with foreign laws.

1.5 Revenue received from the purchase and sale of goods overseas 1) without importing goods into Thailand or 2) that are imported into Thailand through border crossing or transshipment according to customs laws, and revenue from providing services in relation to foreign trade to juristic persons established under foreign laws or revenue received overseas or generated overseas.

2. Revenue subject to a 10% Corporate Income Tax (CIT) rate*

2.1 Revenue received from managerial, technical,, supporting or financial management services to associated enterprises established in accordance with Thai law.

2.2 Revenue from royalties derived by associated enterprises established in accordance with Thai law.

Note: The amount of revenue subject to corporate income tax reduction must not be more than revenue subject to corporate income tax exemption according to item 1.1 and 1.2.

Personal Income Tax

Personal income tax for expatriates at the specialist or executive level working in an IHQ is reduced to 15%.

Specific Business Tax

Exemption for the revenue from lending to associated enterprises

Withholding Tax

Exemption for the following revenue:

- Dividends paid by the IHQ (dividends paid from revenue subject to corporate income tax exemption) to corporate shareholders in foreign countries
- Interest paid by the IHQ (interest from loans taken out by an IHQ to relend to associated enterprises under its corporate treasury center) to corporate lenders in foreign countries

Conditions to apply for privileges offered by the Revenue Department:

- Must supervise foreign branch offices or associated enterprises in not less than one country.
- Paid-up registered capital must not be less than THB10 million on the last day of each accounting period.
- Total business spending (sales and administration expenses) must not be less than THB15 million per year in Thailand.

Note: If the IHQ is unable to meet any of the specified conditions within an accounting period, the tax incentives in that year will not be granted.

International Trade Center (ITC)

Incentives offered by the Board of Investment (BOI)

- Permission to bring in skilled personnel and experts into the Kingdom to work in investment promoted activities.
- Permission to own land
- Exemption of import duty on machinery
- Exemption of import duty on raw materials and parts for export purpose

Conditions to apply for privileges offered by the BOI

- An ITC must have paid-up registered capital of not be less than THB10 million.

Incentives offered by Revenue Department (RD)

Corporate Income Tax (CIT)

For 15 accounting periods from the date of approval by the Director General of the Revenue Department, an ITC is entitled to corporate income tax exemption on:

1. Revenue received from the purchase and sale of goods overseas 1) without importing goods into Thailand or 2) that are imported into Thailand through border crossing or transshipment according to customs laws.

2. Revenue from providing services in relation to foreign trade to juristic persons established under foreign laws or revenue received overseas or generated overseas.

Personal Income Tax

Personal income tax for expatriates at the specialist or executive level working in an ITC is reduced to 15%.

Conditions to apply for privileges offered by the Revenue Department:

- Paid-up registered capital must not be less than THB10 million on the last day of each accounting period.
- ITC must have total business spending (sales and administration expenses) of at least THB15 million per year in Thailand.

Note: If the ITC is unable to meet either one of the specified conditions within an accounting period, the tax incentives in that year will not be granted.

In addition, to facilitate IHQ/ITC registration for a foreign business license, the **Department of Business Development, Ministry of Commerce**, has reduced the timeframe as follows:

- 30 days to 15 days for BOI-promoted companies
- 60 days to 30 days for non-BOI promoted companies

USEFUL LINKS

FOR INVESTORS

Doing Business

Legal Issues for Investors

Foreign Business Act of 1999 and Activities Restricted to Thai Nationals

[http://www.boi.go.th/index.php?page=legal issues for investors 01 foreign business act](http://www.boi.go.th/index.php?page=legal%20issues%20for%20investors%2001%20foreign%20business%20act)

Work Permits

[http://www.boi.go.th/index.php?page=legal issues for investors 02 work permits](http://www.boi.go.th/index.php?page=legal%20issues%20for%20investors%2002%20work%20permits)

Taxations

Corporate Income Tax

[http://www.boi.go.th/index.php?page=corporate income tax](http://www.boi.go.th/index.php?page=corporate%20income%20tax)

Value Added Taxes

[http://www.boi.go.th/index.php?page=value added taxes](http://www.boi.go.th/index.php?page=value%20added%20taxes)

Personal Income Tax

[http://www.boi.go.th/index.php?page=personal income tax](http://www.boi.go.th/index.php?page=personal%20income%20tax)

Customs Duties

[http://www.boi.go.th/index.php?page=custom duties](http://www.boi.go.th/index.php?page=custom%20duties)

Patents and Trademarks

Patents

<http://www.boi.go.th/index.php?page=patents>

Copyright

<http://www.boi.go.th/index.php?page=copyright>

Trademarks

<http://www.boi.go.th/index.php?page=trademark>

Industrial Licensing

Factory Operations

http://www.boi.go.th/index.php?page=factory_operations

Other Provisions

http://www.boi.go.th/index.php?page=other_provisions

Factory Licenses

http://www.boi.go.th/index.php?page=factory_licenses

Factory Expansion

http://www.boi.go.th/index.php?page=factory_expansion

Environmental and Health Impact Assessments

http://www.boi.go.th/index.php?page=environment_health_impact

Labor Issues

Labor Regulations

http://www.boi.go.th/index.php?page=labor_issues_01_labor_regulations

Legal Implications of Labor Management

http://www.boi.go.th/index.php?page=labor_issues_02_legal_implications_of_labor_management

Tips on Recruiting and Developing Staff

http://www.boi.go.th/index.php?page=labor_issues_03_tips_on_recruiting_and_developing_staff

Recruiting Technically-skilled Manpower

http://www.boi.go.th/index.php?page=labor_issues_04_recruiting technically skilled manpower

Important Addresses

http://www.boi.go.th/index.php?page=labor_issues_05_important_addresses

Skill Training

http://www.boi.go.th/index.php?page=pdf_page&menu_id=328

Skill Development and Promotion Act

http://www.boi.go.th/index.php?page=pdf_page&menu_id=329

Cost of Doing Business in Thailand

Typical Cost of Starting and Operating Business

[http://www.boi.go.th/index.php?page=typical costs of starting and operating a business](http://www.boi.go.th/index.php?page=typical_costs_of_starting_and_operating_a_business)

Labor Costs

[http://www.boi.go.th/index.php?page=labor costs](http://www.boi.go.th/index.php?page=labor_costs)

Tax Rates and Double Taxation Agreements

[http://www.boi.go.th/index.php?page=tax rates and double taxation agreements](http://www.boi.go.th/index.php?page=tax_rates_and_double_taxation_agreements)

Transportation including Fuel and Freight Rates

[http://www.boi.go.th/index.php?page=transportation costs including fuel and freight rates](http://www.boi.go.th/index.php?page=transportation_costs_including_fuel_and_freight_rates)

Communication Costs

[http://www.boi.go.th/index.php?page=communication costs](http://www.boi.go.th/index.php?page=communication_costs)

Utility Costs

[http://www.boi.go.th/index.php?page=utility costs](http://www.boi.go.th/index.php?page=utility_costs)

Selected Costs of Living in Bangkok

[http://www.boi.go.th/index.php?page=selected costs of living in bangkok](http://www.boi.go.th/index.php?page=selected_costs_of_living_in_bangkok)

Industrial Estate in Thailand

http://www.boi.go.th/index.php?page=pdf_page&menu_id=350

Investment Promotion

Incentives

<http://www.boi.go.th/index.php?page=incentive>

Other Issues

New BOI Investment Promotion Policy

http://www.boi.go.th/index.php?page=faq_inside&group_id=300

Procedures to obtain business license for Treasury Center under IHQ

http://www.boi.go.th/index.php?page=faq_inside&group_id=318

Handy Websites

Board of Investment

<http://www.boi.go.th/index.php?page=index>

One Start One Stop Investment Centre

<http://osos.boi.go.th/>

Department of Business Development

http://www.dbd.go.th/dbdweb_en/main.php?filename=index

Department of Foreign Trade

<http://www.dft.go.th/Default.aspx?alias=www.dft.go.th/en>

Ministry of Commerce

<https://www.moc.go.th/index.php/moc-english.html>

Immigration Bureau

<http://www.immigration.go.th/nov2004/en/base.php>