

## **Business Organizations**

The forms of business organization available in Thailand are similar to those found in most developed countries.

### **Sole proprietorships**

A sole proprietorship is a business owned by a sole natural person whose liability is unlimited. A sole proprietor can engage in virtually any lawful business, unless there is a special law to the contrary. For example, a sole proprietor may not engage in finance or insurance business because these by law are restricted to limited companies. Generally speaking, there are few restrictions.

**Tax benefits** Sole proprietors are entitled to certain tax benefits. Whilst they are taxed at the progressive natural person tax rates of between 5%-37%, a sole proprietor can in most cases choose to be taxed on his gross receipts, less a standard deduction. Although a proprietor must keep a record of his gross receipts, he need not keep a record of his expenses.

The fact that a sole proprietor pays income tax at only one rate and can choose between itemizing expenses and taking a standard deduction can be a substantial benefit.

Restrictions on foreign ownership for foreigners, the difficulty with a sole proprietorship is that it cannot engage in any business restricted by the Foreign Business Act unless a license is first obtained. Americans, who usually do not need such licenses, can easily establish a sole proprietorship under the provisions of the Treaty of Amity and Economic Relations

**Commercial registration** Sole proprietorships engaged in a number of activities, including sale of goods, auction sales, transportation, money lending, banking type services, handicraft industries and hotel keeping, must register with the Ministry of Commerce. Most service related occupations are exempt from commercial registration.

### **Private limited companies**

The private limited company is the form of business organization that is most popular with foreign business men because there is flexibility, especially in joint venture situations, in formulating how the company may be controlled and managed.

**Shareholders**, A limited company must initially, and at all times, have at least three shareholders.

**Directors**, After the registration has been completed, the company will be managed by its directors. At least one third of the directors must retire annually, but these directors may be re-elected. The laws concerning directors' liabilities and duties are similar to those found in other countries.

**Shareholders meetings**, At all shareholders meetings, unless a poll is demanded, each shareholder or proxy holder present has an equal vote, regardless of the number of shares owned or represented. If a poll is demanded by at least two persons entitled to vote, each share is counted and is entitled to an equal vote. In some cases, the articles of association may specify that only blocks of a given number of shares may vote. If, for example, the articles require that only blocks of ten or more shares may vote, then shareholders holding ten or more shares and those holding less than ten shares who pool their shares together into blocks of ten may vote. A shareholder with only nine shares and no one with whom to pool his shares, may not vote.

The shareholders, in addition to electing directors, appoint the auditors, approve the balance sheet (the preparation of which is mandatory) and the declaration of a final dividend, if any.

**Effecting major changes**, Substantial changes in the company cannot be made except by a special resolution of the shareholders. A substantial change here means: changing the memorandum or articles of association, increasing or reducing the capital, liquidating the company or merging it with another company.

A special resolution must be passed by two consecutive shareholder's meetings. The first must pass the resolution by a three-quarters vote of those present and the second meeting must confirm the resolution by a two-thirds vote. The articles of association may provide for greater, but not lesser majority votes.

Assuming that the articles of association of the company do not require a vote greater than that provided for in the Civil and Commercial Code, a shareholder must control 75% of all the shares in order to ensure absolute control.

**Special shareholder rights**, Under certain circumstances, where the directors refuse to call a shareholder's meeting, the shareholders may themselves call one. Sometimes this is done to oust unwanted directors. In cases where the company fails to act, any shareholder may bring an action against a director who causes injury to the company.

**Taxation**, Limited companies are subject to corporate income tax at the rate of 20%.

**Branch offices**

A foreign juristic person (whether a limited company, partnership or any other business entity) may do business in Thailand by establishing a branch office and also complying with any relevant laws relating to its business.

**Management,** A branch office is managed by a branch manager, appointed under a power of attorney issued by the company.

**Taxation,** Branch offices pay juristic person income tax, but in certain cases there are modifications in the method of calculating the tax. See Chapter below on Corporate Income Tax.

**Foreign Business Act,** If the branch office intends to engage in a business covered by the Foreign Business Act, then it must apply for a license.

If the company establishing a branch is an American company and can comply with the provisions of the Treaty of Amity and Economic Relations, the branch office may apply for a treaty protection letter from the Ministry of Commerce and thereafter engage in any business, except those excluded by the treaty. If the treaty is applicable, the American company must apply for a certificate, but need not apply for a license under the Foreign Business Act.

**Documentation,** In order to be registered as a branch office, the foreign company must lodge with the Ministry of Commerce copies of its certificate of incorporation, memorandum and articles of association (or other similar documents) and a power of attorney in favor of the branch manager. The power of attorney must be broad enough in the opinion of the Ministry of Commerce so as to give the branch manager adequate authority to manage the branch office. The Ministry may request other documentation.

Copies of all documents must be certified to be true copies by a notary public or other official. Signatures on original documents such as the power of attorney should be certified to be true signatures and the authority of the person should also be certified by a notary public. All such notarized or otherwise certified documents must then be authenticated by a Thai Embassy or Consulate.

**Liability of the head office,** Since a branch office is for legal purposes a part of the parent company, the parent is liable under civil and criminal law for all the acts and missions of the branch office. For this reason, few foreign companies choose to engage in business in Thailand through a branch of the parent company.

**Representative office**

A representative office may be established by a foreign company. Normally, a representative office is limited to acting as a buying office, carrying out market research and engaging in quality control. It may not engage in trading activities in Thailand. Representative offices require a license under the Foreign Business Act, since they are regarded as service businesses under Schedule 3 of the Act.

Representative offices must submit with their application the same documents, duly authenticated, as in the case of a branch office.

**Work permits and tax,** Work permits and visa extensions are available on an expedited basis for two foreign employees of a representative office established under Ministry of Commerce regulations. Representative offices are normally exempt from income tax, since they do not generate income. However, they are liable to register for tax, since they must pay e.g. withholding income tax on wages paid to employees.

**Capital invested,** A representative office is normally required to remit into Thailand for its operating expenditure, a total of Baht 1 million over a period of five years, with Baht 2 million being remitted within the first year. These funds may not later be remitted out. The capital may be used for normal working capital requirements, e.g. to pay operating expenses such as salaries and rent.

### Regional offices

The government promotes Regional Offices in a manner similar to Representative Offices. Regional Offices supervise and control their affiliates and subsidiaries in Thailand and elsewhere in the region. They are not permitted to have income but rather are reimbursed for expenses.

### International trade and support office

A foreign company may establish an International Trade and Support office. Application is made to the Ministry of Commerce, under the provisions of Schedule 3 of the Foreign Business Act. Such an office may only engage in limited activities, to collect marketing and other information and pass it to the parent company. It must not engage in income generating activities. The parent company must transfer into Thailand at least 5 million Baht as operating capital, of which at least 2 million Baht must be transferred in the first year, and at least 1 million Baht per year after that. The manager of the office must prepare a report on activities undertaken every year, and submit this to the Ministry of Commerce, as a condition for the office to be permitted to continue its activities.

### Regional operating headquarters

In August 2003, two decrees came into effect enabling foreign companies to establish a regional operating headquarters in Thailand. Generous tax incentives are available to a ROH.

**Requirements for a ROH,** A ROH must comply with the following requirements :

- . It must be a Thai registered company or juristic partnership.
- . It must provide qualifying services. These include: general administration business and planning, procurement of raw materials and parts, research and development, technical support, marketing and sales promotion, regional management and training, financial advice, economic and financial analysis and research, credit control and other support services, in Thailand or elsewhere.
- . It must have 10 million Baht minimum paid up capital.
- . The ROH must provide services to subsidiaries or branches in at least three countries.
- . At least 50% of the revenue of the ROH must be derived from foreign subsidiaries or branches. (For the first three years this is reduced to one third).

**Tax concessions,** The tax concessions offered to a ROH are as follows:

- 10% corporate tax will be charged, instead of the usual rate of 20%, on (1) on its general income; (2) on net profits from royalties derived from R & D in Thailand; and (3) on interest from loans made to branches or subsidiaries, where the loan is made from borrowings.
- No tax is payable on dividends received by the ROH from domestic or foreign subsidiaries.
- No withholding tax on dividends paid by the ROH to foreign companies that do not carry on business in Thailand.
- Depreciation is permitted at 25% for building costs in the acquisition year, with the balance to be depreciated over 20 years.
- No personal income tax on income received by the ROH's expatriate employees for work performed outside Thailand. But such salaries will not be a deductible expense of the ROH or other subsidiaries that directly/indirectly carry on business in Thailand.
- 15% flat rate personal income tax for foreign employees on salaries derived from employment by the ROH, subject to conditions. This concession will apply for only two years.
- VAT will be 0% on services supplied by the ROH that are exported.

### **Details of objectives**

The following is a sample of the details of objects approved by the Ministry of Commerce for limited companies and partnerships that are majority Thai owned. Additional objects may be added.

1.To buy, provide, receive, hire, hire-purchase, own, possess, modify, use and manage by other means, any property, including interests relating to that property.

- 2.To sell, transfer, mortgage, pledge, exchange and dispose of property by any means.
- 3.To act as broker, agent, commission agent, in all types of activities and businesses except in the businesses of insurance, recruitment of members for associations and trading in securities
- 4.To borrow money, withdraw money on overdraft from banks, juristic entities or other financial institutions and lend money or grant credit facilities by other means with or without security, including receiving, issuing, transferring and endorsing bills and notes or other negotiable instruments.
- 5.To establish branch offices or appoint agents, both locally as well as in foreign countries.
- 6.To participate as a partner with limited liability in partnerships and as a shareholder in other limited companies.
- 7.To trade in rice, rice products, tapioca products, corn, sesame, beans, pepper, hemp, kapok, cotton, lacquer, castor beans and oil, timber, rubber, vegetables, fruit, forest product, herbs, animal hides, animal horns, live animals, meat, sugar, animal feed and all types of agricultural products.
- 8.To trade in machinery, motors, mechanical tools, labor-saving devices, conveyances, electric generators and electrical appliances, refrigerators, air conditioners, electric fans, electric rice cookers, electric irons, water pumps, heaters, coolers, kitchen utensils, ironware, copper ware, brassware, sanitary ware, household products, furniture, electrical equipment, waterworks equipment, including spare parts and accessories of the goods mentioned above.
- 9.To trade in fresh food, dried food, finished foodstuffs, canned goods, food condiments, beverages, liquor, beer, cigarettes and other foodstuffs.
- 10.To trade in cloth, thread, apparel, ready-made clothes, personal adornments and ornaments, cosmetics, beauty aids and beauty equipment and other consumer goods.
- 11.To trade in medicines for the treatment and prevention of human and animal diseases, medical supplies, chemicals, medical and pharmaceutical equipment, fertilizer, agricultural pest control chemicals, all types of chemical nutrients for plants and animals, scientific tools and utensils.
- 12.To trade in gold, gold-alloys, silver, diamonds, jewelry gems and other precious stones, including imitations thereof.

13.To trade in paper, stationery school textbooks, printed forms, books, educational equipment, calculators, printing mechanisms, printing equipment, printed materials, newspapers, filing cabinets and all types of office equipment.

14.To trade in construction materials, equipment and tools used in construction work, all types of workmen's tools, paint, tools used in painting and all types of materials for decorating buildings.

15.To trade in plastics or other things of similar characteristics, both in the form of raw materials and as finished items.

16.To trade in raw rubber, rubber sheets or other types of rubber products or products obtained from any part of the rubber tree, including synthetic rubber, artificial or imitations of the said materials or goods produced by scientific processes.

17.To engage in the activities of farming, gardening, plantation work, salt-farming, forestry work, rubber plantations, animal raising and cattle breeding.

18.To engage in the activities of rice-milling, saw-milling, timber-finishing and timber-curing, motorcar body assembly, ceramic and enamelware production, pottery ware production, vegetable-curing, hemp-packing, vegetable oil extraction, paper mills, sack plants, weaving mills, spinning mills, dyeing and printing of designs on cloth, manufacturing and retreading of motor-vehicle tires, ironworks, steel casting and lathing, zinc production, manufacture of ready-made foodstuffs, liquor production, gas production, cigarette manufacturing, sugar production, plastic ware production, pressing and smelting of metals, production of doors and windows, glass production, manufacture of beverages, rubber molding and motorcar assembly.

19.To engage in the activities of printing presses, undertaking the printing of books, printing books for sale and publishing newspapers.

20.To engage in the activity of ice-making.

21.To engage in fishing activities and private fish markets.

22.To engage in quarrying activities.

23.To engage in the business of construction contractor for the construction of buildings, commercial buildings, residential buildings, office buildings, roads, bridges, dams, tunnels and all other types of construction work, including undertaking to perform all types of civil works.

24.To operate the activities of mining, smelting, separation, transformation, refining, exploration for analysis, inspection, crushing and transportation of minerals.

25.To operate hotels, restaurants, bars, nightclubs, bowling alleys, massage parlors, cinemas and other places of entertainment, holiday resorts, sports fields and swimming pools.

26.To engage in the business of domestic and international transportation, loading and unloading of goods and passengers on land, sea and air, including undertaking to provide services in clearing goods from ports in accordance with customs formalities and handling all types of freight for transportation.

27.To carry on the business of a travel agency, including all types of business connected with travel and tourism.

28.To engage in the activities of selling, buying and exchanging foreign currency.

29.To import and export all the goods specified in these objects.

30.To engage in the activities of hairdressing, hair setting, beauty parlors, tailoring, dressmaking and laundry.

31.To engage in the business of photography, developing, printing and enlarging photographs as well as photocopying.

32.To engage in the business of producing and distributing motion pictures.

33.To engage in the business of petrol stations and providing service in repairs, maintenance, inspection, lubrication and rust prevention for all types of vehicles, including the provision of services in installing, inspecting and rectifying all types of disaster-prevention equipment.

34.To engage in the business of providing services in the fields of law, accounting, engineering, architecture and advertising.

35.To engage in the business of guaranteeing debts, liabilities and performance of contracts, including supplying guarantees for persons who enter the Kingdom or who depart for foreign countries in accordance with the immigration, tax and other laws.



36.To act as adviser and consultant in problems concerning management, commerce and industry, including problems concerning production, marketing and distribution.

37.To engage in the business of collecting, compiling, preparing, printing and disseminating statistics and data concerning agriculture, industry commerce, finance and marketing, including analysis and evaluation of the results of business operations.

38.To operate private hospitals, nursing homes, to treat patients and sick persons, to provide teaching and training in medical and health subjects.

39.To administer, look after the interests, collect debts and manage the property of others.

40.To bid for the sale and manufacture of goods under these objectives, for other persons, groups of persons, juristic entities, governmental bodies and state enterprises.