



Businesses Requiring Foreign Business License (“FBL”)

REPRESENTATIVE OFFICE

Definition

A representative office is defined as an office in Thailand of a foreign company engaged in the business of international trading. A representative office in Thailand cannot engage in any profit-seeking or profit-making enterprise. The scope of activities of a representative office must be limited to approved activities, or significant Thai tax liabilities can arise. The risk of exceeding the scope of activities is that the income of the parent or affiliated companies may be deemed earned in Thailand and subject to taxation.

If the representative office engages in other non-permitted activities, 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 which 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 or VAT. 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.

Scope of Representative Office Activities

“International trading business” means activities concerning:

- The finding of sources of purchase of goods or services in Thailand for the head office.
- The checking and control of quality and quantity of goods purchased or hired for manufacturing in Thailand by the head office.
- The giving of advice on various aspects concerning goods of the head office sold to agents or consumers in Thailand.
- The propagation of information concerning new goods or services of the head office.
- The report of movements of business in Thailand to the head office.
- The above international trading business is regarded as a service activity under Schedule 3 of the Foreign Business Act, thus the establishment of a representative office requires a foreign business license from the Director-General of the Department of Business Development.



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Incorporation Fees for Representative Office

Application fee (non-refundable) is Baht 2,000.

If application is approved, government fees at the rate of Baht 5 for every Baht 1,000 or a fraction thereof of the registered capital, with a minimum of Baht 20,000 and a maximum of Baht 250,000.

Duration of Representative Office

The entire period in which business operations are conducted.

Conditions for Representative Office Permission

- Total loans for use in the licensed business must not exceed seven times the amount of money brought to be used for the business.
- At least one person responsible to conduct representative office's business must be domiciled in Thailand.
- Once the ministerial regulations issued in accordance with the Foreign Business Act have come into effect, this license shall be returned and replaced by a new license.
- The minimum capital to be used in the permitted business shall originate abroad from the Head Office in the following months:
 - If there is no foreign individual employed by the representative office, the minimum capital required to be brought in from abroad will be at least Baht 3 million or at least 25% of the average of the annual estimated expenses for 3 years, whichever is greater (25% of which must be brought within the first 3 months, 50% by the end of the first year, and at least an additional 25% remitted annually thereafter); or
 - If the representative office employs foreign employee(s), the minimum capital required to be brought in will be Baht 5 million (out of which Baht 1 million must be remitted within the first 6 months, and total amount received shall reach Baht 2 million within the first year, and not less than Baht 1 million for every year thereafter until the Baht 5 million amount has been remitted in full).

Evidence of the minimum capital brought or remitted into Thailand shall be presented and submitted together with a calculation in Thai currency using the reference exchange rate on such date to the Department of Business Development within 15 days from the date of bringing or remitting into Thailand. Remittances can be made only after the granting of the license.



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Immigration and Work Permit Requirements for Representative Office

An application for work permit and application for a one-year visa may be filed after entering Thailand with a valid non-immigrant business visa and permission to establish a representative office is granted. The application for work permit and visa must be filed with the One-Stop Service Center. For the first year of operation, a maximum of three work permits will be issued, and thereafter the total number of work permits will be limited to five, depending on necessity.

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.

REGIONAL OFFICE

Definition

A regional office means an office established by a transnational corporation in a country other than the country of registration of the Head Office without having to register as a juristic person under the laws of the country where such office is established.

Scope of Permitted Regional Office Activities

- To contact, coordinate, and supervise on behalf of the Head Office the activities of branches and/or subsidiary companies located in the same region as the regional office.
- To provide services to the Head Office's branches and subsidiary companies, such services being advisory services, management services, training and personnel development services, financial management services, marketing control and sales promotion planning, product development, and research and development services.

Please note that no income can be derived from providing the above activities. As such, a regional office cannot accept a purchase order or make a sales offer, nor negotiate and enter into any business arrangement with a person or juristic person in the country where the office is established. All expenditures incurred by the regional office in connection with the above activities will be borne by the Head Office. The Head Office will be the only source of funds.

The above permitted regional office activities are regarded as service activities under Schedule 3 of the Foreign Business Act, thus the establishment of a regional office requires an alien business license from the Director-General of the Department of Business Development.



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Fees for Regional Office

Application fee (non-refundable) is Baht 2,000.

If the application is approved, the government fee will be set at the rate of Baht 5 for every Baht 1,000 or a fraction thereof of the registered capital, with a minimum of Baht 20,000 and a maximum of Baht 250,000.

Duration of Regional Office

Commencing from the date the fee is paid throughout the period approved.

Conditions for Regional Office Permission

- Total loans for use in the licensed business must not exceed seven times the amount of money brought to be used for the business.
- At least one person responsible for conducting the regional office's business must be domiciled in Thailand.
- Once the ministerial regulations issued in accordance with the Foreign Business Act have come into effect, this license shall be returned and replaced by a new license.
- The minimum capital to be used in the permitted business shall originate abroad from the Head Office in the following months:
 - If there is no foreign individual employed by the regional office, the minimum capital required to be brought in from abroad will be at least Baht 3 million or at least 25% of the average of the annual estimated expenses for 3 years, whichever is greater (25% of which must be brought within the first 3 months, 50% by the end of the first year, and at least an additional 25% remitted annually thereafter); or
 - If the regional office employs foreign employee(s), the minimum capital required to be brought in will be Baht 5 million (out of which Baht 1 million must be remitted within the first 6 months, and total amount received shall reach Baht 2 million within the first year, and not less than Baht 1 million for every year thereafter until the Baht 5 million amount has been remitted in full).

Evidence of the minimum capital brought or remitted into Thailand shall be presented and submitted together with a calculation in Thai currency using the reference exchange rate on such date to the Department of Business Development within 15 days from the date of bringing or remitting into Thailand. Remittances can be made only after the granting of the license.

Immigration and Work Permit Requirements for Representative Office

An application for work permit and application for a one-year visa may be filed after entering Thailand with a valid non-immigrant business visa and permission to establish a representative office is granted. The application for work permit and visa must be filed with the One-Stop Service Center. For the first year of operation, a maximum of three work permits will be issued, and thereafter the total number of work permits will be limited to five, depending on necessity.



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.

BRANCH OFFICE

A foreign company which plans to conduct business on its own in Thailand, such as a contract project, usually establishes a branch office to undertake the project. There are no special registration requirements for the establishment of branches of foreign companies to do business in Thailand. However, most business activities fall within the scope of one or more laws or regulations which require special regulation or license, e.g., VAT registration, taxpayer identification card, Commercial Registration Certificate, Alien Business License etc., either before or after the commencement of the activities. Foreign business establishments must therefore follow the generally applicable procedures. If the intended activity falls under the Foreign Business Act, the branch must apply for an alien business license prior to performing any of the intended activities.

JOINT VENTURE

Definition

A Thailand limited company which is owned by two or more companies is often referred to as a joint venture. Conceptually, this type of limited company can be viewed as an incorporated joint venture, although such term does not appear in the Civil and Commercial Code or elsewhere in Thai law. Another type of joint venture is an unincorporated joint venture, which is the type to which we refer below.

In a contracted project which cannot be carried out by a single company, it is common for a company to join with others in the form of a joint venture. According to Thai law, a joint venture has no legal personality. It is formed by contract between one company and another company or juristic partnership or individual, and exists only for a particular project or specific venture. Although it may engage in business, it cannot be registered. The Revenue Department, however, treats a joint venture as a juristic company for purposes of tax liability. The joint venture must therefore apply for a taxpayer identification card. Moreover, Value Added Tax registration is required if a joint venture is qualified under the requirements of the Revenue Code.

The Revenue Code requires that at least one of the joint venture partners be a juristic entity, and the Revenue Department further stipulates that the joint venture must also have two elements:

- A joint investment in the joint venture and sharing of profit or loss under the joint venture agreement.
- The partners having joint liability to third parties dealing with the joint venture.



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A foreign company which participates in a joint venture is required to obtain an alien business license under the Foreign Business Act and create a branch office in Thailand to engage in business as a partner of the joint venture. The conditions stipulated in the business permit issued to such a foreign partner will be the same as described above. Such a foreign partner does not need to register for its own taxpayer identification card. However, the joint venture itself must register.

The registration process for the permit of the foreign partner and the taxpayer identification card of the joint venture takes about eight to ten weeks to complete.

Fees for Joint Venture Office

If the application is approved, the government fee will be set at the rate of Baht 5 for every Baht 1,000 or a fraction thereof of the registered capital, with a minimum of Baht 20,000 and a maximum of Baht 250,000.

Our Scope of Work

Our scope of work will include assisting you by providing advice on aspects of Thai law where necessary, certification and translation of all the documents needed for the application of the FBL, registering the incorporation documents, assisting you to apply for BOI privileges and liaising with BOI when necessary. We will also assist you to acquire all the necessary licenses for your businesses.

In addition, within SBC Business Group, we also have a team of experienced accountants to assist you in tax planning, tax submission, auditing and accounts.