

THE PRACTICAL GUIDE TO STARTING A BUSINESS IN THAILAND



Opportunities and Pitfalls of FDIs in Thailand

Strategically located in the heart of the Mekong region with modern infrastructure, a skilled and cost-effective labor force, strong exports, and easy access to raw materials, Thailand has become a worthy candidate for the regional hub status. As a result, a number of tax and non-tax incentives were introduced in an effort to attract foreign direct investment from both SMEs and multinational corporations. Thanks to a streamlined company set-up process, transparent legislation, open economy, and government policies favorable to Foreign Direct Investment (FDI) and free trade, doing business in Thailand is now easier than ever.

One of the few obstacles to FDI in Thailand is the Foreign Business Act of 1999 (“FBA”), which regulates the investment activities foreign companies may engage in. While some activities are completely prohibited to companies that exceed the 49% limit on foreign ownership, some may be engaged in with prior approval from a designated government agency, and some do not require any special approval at all. Under the FBA, if foreigners wish to engage in activities where Thai companies are not yet ready to compete, such as legal services or accounting, the foreign company must obtain a Foreign Business License before it begins operations. Another challenge foreign investors may face is acquiring capital from Thai banks, which are generally wary of lending to



smaller foreign entities; however, these barriers are easily surmounted with skilled assistance, and should not deter businesses from entering the Thai market.

Types of Business Structures

Thailand recognizes limited companies, partnerships, and other forms of corporate presence.

Limited Companies

Thai limited companies are the most common type of business entity for foreigners to incorporate in Thailand. The registration process for this type of company is streamlined and the types of activities it can engage in are broad.

A **private limited company** is governed by the Civil and Commercial Code. It requires at least three founders to incorporate, and is formed by registering two constitutive documents, a Memorandum of Association (Articles of Incorporation) and the Articles of Association (By-laws). A minimum of three shareholders is required at all times, and all shares must be subscribed to, with at least 25% of shares fully paid-up. Foreigners are permitted to own no more than 49% of a Thai limited company's capital shares, with the exception of companies under certain conditions, such as those granted a Foreign Business License, which permits 100% foreign ownership of a company.

Public limited companies are governed by the Public Limited Company Act. The incorporation process is similar to a private limited company, except that a public limited company requires a minimum of fifteen founders and five directors to be established, and it must have at least fifteen shareholders at all times. The rules and regulations concerning offering shares, debentures, and warrants to the public are administered by the Securities and Exchange Commission. Public limited companies may apply to list their securities on the Stock Exchange of Thailand. There are no restrictions on share transfers, except for those protecting the company's rights and interests as allowed by law and those maintaining the limit on foreign ownership.

Partnerships

Partnerships are categorized into two types: ordinary partnerships and limited partnerships.

In **ordinary partnerships**, the partners are jointly and severally liable for all obligations of the partnership. Ordinary partnerships may be registered or unregistered, and the two types are treated differently for tax purposes. Registered ordinary partnerships are taxed as corporate entities, separate and distinct from the individual partners, while unregistered ordinary partnerships, which are not juristic persons, are taxed as individuals.

Limited partnerships must be registered and taxed as corporate entities. They comprise two kinds of partners: at least one whose individual liability is limited to the amount of capital contributed to the partnership, and at least one who will be jointly and unlimitedly liable for all obligations of the partnership.

Other forms of corporate entities

Foreign companies may also establish branch offices and representative offices to carry out certain business activities in Thailand. These types of business structures are established under the law of a foreign country and are considered to be the same legal entity as the parent company or head office.

Branch offices in Thailand may engage in trading activities and generate income. Although there is no explicit requirement for foreign corporations to register their branch office, the activities the branch office undertakes almost always fall under laws and regulations that require special registrations—such as VAT, taxpayer identification card, Foreign Business License, Commercial Registration Certificate, and so on—in order to conduct business. To be granted a Foreign Business License, the branch office's minimum paid-up capital must exceed 25% of the estimated average operating expenses per annum over a period of three years and be no less than THB 3 million.

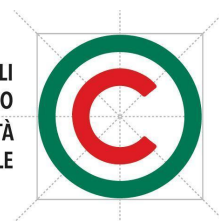
As the branch office of a foreign corporation is considered to be an extension of the parent company, the parent company remains liable for civic, criminal and tax violations committed by the branch in Thailand. Income derived from a branch office's operations in Thailand is subject to corporate income tax at the standard 20% rate. Before opening a branch office, foreign corporations must consider what constitutes income subject to Thai tax, as the Revenue Department may impose tax on revenue directly earned by the foreign head office from sources within Thailand.

A **representative office** is extremely limited in its scope and may only engage in activities conducted on behalf of the head office that do not generate revenue. Subsequently, representative offices are not subject to taxation except for interest; however, they are still required to obtain a Corporate Tax Identification Number and submit income tax returns and financial statements to the Revenue Department and Department of Business Development. Its expenses are paid entirely by the head office, which is treated as a subsidiary.

The activities a representative office may engage in are as follows:

1. Reporting on business developments in Thailand to the head office;
2. Providing advice related to products that are being sold to distributors or customers;
3. Sourcing goods and services in Thailand;
4. Inspecting and controlling the quality and quantity of goods purchased or ordered to be manufactured in Thailand;
5. Disseminating information regarding new products or services.

If the representative office offers services outside of this scope, the Revenue Department will subject it to corporate income tax on all income it has received.



	Sole proprietorship	Non-registered ordinary partnership	Registered ordinary partnership	Limited partnership	Private company limited	Public company limited
Owner's status	Natural person	Natural person	Juristic person	Juristic person	Juristic person	Juristic person
Number of owners	Single owner	At least 2 owners	At least 2 owners	At least 2 owners	At least 3 owners	At least 15 owners
Ability to manage	Complete control	Complete control	Complete control	Only partners with unlimited liability can manage the company	Management assigned by shareholders	Management assigned by shareholders
Foreign ownership limitation	Not available	No more than 49% if prohibited by FBA *	No more than 49% if prohibited by FBA *	No more than 49% if prohibited by FBA *	No more than 49% if prohibited by FBA *	No more than 49% if prohibited by FBA *
Characteristics	A single-person or single-company-owned business	The owner has no legal authority and is considered an individual for tax purposes	The owner is a legal entity that is registered and taxed as a corporation	The partnership is formed with one limited-liability partner and one unlimited-liability partner	A limited company has capital divided into shares, and the shares of a business cannot be sold to the general public	The company may issue shares, debentures, and warrants to the public and apply to have their securities listed on the Stock Exchange of Thailand
Tax	Personal income tax 5-35%	Personal income tax 5-35%	Corporate income tax 20% (filing)	Corporate income tax 20% (filing)	Corporate income tax 20% (filing)	Corporate income tax 20% (filing)

			twice a year)	twice a year)	twice a year)	twice a year)
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Table 1. Comparison of Business Structures.

1. Reserve your business name	<ul style="list-style-type: none"> Businesses must reserve their company name on the DBD website at Reserve DBD. Once approved, a company name will be valid for 30 days.
2. File the Memorandum of Association (MOA) at VAT-SBT online	<ul style="list-style-type: none"> The MOA is a legal document which the company's founder is required to submit to the DBD. The MOA contains information such as the company's goals and objectives.
3. Set up a statutory meeting	<ul style="list-style-type: none"> A statutory meeting requires the attendance of all company founders and shareholders to decide and pay for the company's registered capital and discuss the articles of association (AOA).
4. Submit a registration application	<ul style="list-style-type: none"> A registration application must be submitted either online or in person at a DBD office to show that a business has completed the legislative requirements. The company will then receive a business certificate confirming its registration.
5. Register for corporate income tax (CIT) and value-added tax (VAT)	<ul style="list-style-type: none"> After the company has been registered, it must apply for and receive a company corporate tax ID card from the Revenue Department within 60 days. Companies are required to pay corporate income tax (CIT) and file tax filings, according to the Revenue Department.

Table 2: Step-by-step company incorporation process in Thailand.

Employment

Foreigners must obtain a valid work permit in order to legally work in Thailand. Work permits state foreign workers' current occupation, job description and the companies they are employed by. Foreigners are not entitled to work or conduct business in Thailand—regardless of their type of visa—unless they obtain a work permit. Those who wish to work, conduct business or undertake investment activities in Thailand must also apply for a Non-Immigrant Visa at the Royal Thai Embassies or Royal Thai Consulates-General, which must be obtained before entering Thailand. Subsequently, the application to a work permit may be submitted to the Ministry of Labor and the process may take about seven business days.

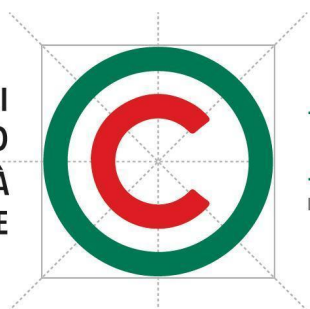


	Work Visa	Smart Visa	Long-Term Resident Visa
Work permits	Work permit required	No work permits required	Permission to work in Thailand (Digital work permit will be granted to the visa holder and spouse)
Eligibility	Anyone who wishes to be employed in Thailand	<ol style="list-style-type: none"> 1. Qualified workers 2. Senior executives 3. Investors 4. Startup entrepreneurs 5. Family of visa holders 	<ol style="list-style-type: none"> 6. Qualified global citizens 7. Qualified pensioners 8. Work-from-Thailand professionals 9. Highly skilled professionals
Privilege(s)	Access to One-Stop Service (OSS) of the Immigration Division at Chamchuri Square, Bangkok	<ol style="list-style-type: none"> 10. 90-day immigration reporting extended to one-year 11. Spouse and children also granted permission 12. Access to One-Stop Service (OSS) of the Immigration Division at Chamchuri Square, Bangkok 13. Access to fast-track service at international airports in Thailand 14. No re-entry permit required 	<ol style="list-style-type: none"> 15. 90-day immigration reporting extended to one-year 16. Spouse and children also granted permission 17. Access to One-Stop Service (OSS) of the Immigration Division at Chamchuri Square, Bangkok 18. Not included in the international workers' ratio in a corporation 19. Additional privileges; redeemed personal income tax (PIT), right to own land, etc.
Time length	Maximum 1-year visa	Maximum 4-year visa	Maximum 10-year visa

Table 3: HR management, visa, and work permits.

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