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ASIA PACIFIC
**DOING BUSINESS
IN THAILAND**





COMPANY FORMATION IN THAILAND

MAIN FORMS OF COMPANY/BUSINESS IN THAILAND

Businesses in Thailand typically take one of the following forms:

1. Sole proprietorship - single owner
2. Partnership - at least two owners
3. Private limited company - at least three shareholders
4. Public limited company - at least fifteen shareholders
5. Regional operating headquarters (ROH) - wholly owned by foreigners
6. Joint venture - at least two investors
7. Branch of a foreign corporation - wholly owned by foreigners
8. Representative office of a foreign corporation - wholly owned by foreigners
9. Regional office of a foreign corporation - wholly owned by foreigners

SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

After formation of the company, the investor has to involve themselves with the following tax concerns for running a business in Thailand:

1. Corporate Income Tax:
 - Calculated from net earnings (normal 20%, SME 15% to 20%)
 - Filing tax returns 2 times a year
 - Tax being deducted at sources - upon receipts of income from services and being used as tax credit on annual filing
2. Remittance Tax - 10% on profit remittance of branches and payment of dividend and 15% on other income such as interests, royalties, capital gains, rents and professional fees
3. Value Added Taxes - 7% on price of goods for selling of goods and services in Thailand
4. Specific Business Tax - 2.5% to 3% of income derived for some specific business (interest, insurance premium, selling of properties)
5. Personal Income Tax - 5% to 35% of net assessable income of individual
6. Treaties to Avoid Double Taxation - about 60 countries with Thailand
7. Other taxes - Petroleum Income Tax, Custom duty, Stamp Tax, Excise Tax, Property Tax
8. Tax Incentive in Thailand:
 - 8.1) Promotional privileges under Investment Promotion Acts: Corporate income tax
 - Corporate Income tax holiday from 3 to 8 years
 - Reduction or exemption of import duties on raw material and imported machinery
 - Double deduction for the cost of transportation, electricity and water supply for industrial purposes
 - 8.2) Privileges under Free Trade Zone or Export Processing Zone: Exemption of import duties and value



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added tax on raw material imported to and imported machinery setting up in Export Processing Zone and Free Trade Zone

8.3) Privileges under Revenue Code:

- 200% deduction for the cost of hiring qualified researchers doing research and development project
- 150% deduction for the cost of employee's training in order to improve human capital
- Small and medium sized companies can choose to deduct special initial allowance on the date of acquisition for computer (40%), plant (25%) and machinery (40%)
- Corporate income tax reduction for SME company having registered capital less than Baht 5 million from 20% tax rate to be 15% tax rate for first 3 million earnings
- Tax losses within 5 years can be carried forward to deduct against future earnings not more than 5 accounting years.
- Tax exemption for Representative Office and Regional Office in Thailand
- Tax rate reduction on profit from operation from 30% to 10% for ROH earnings from service rendered

LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

There are both restrictions and promotions in some business fields related to establishing a company. Restrictions include owning of properties, especially land blank under Land Code, and some business fields which are prohibited under the Foreign Business Act. Promotions include holding of properties in some specific areas such as Industrial Estate, and various incentives under Investment Promotion Acts.

CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY

Many foreigners will establish a Thai limited company to carry on business in Thailand. The company will be considered a foreigner under the Foreign Business Act (FBA) if half or more of the company's capital is held by foreigners.

If the company's business activities fall within the scope of the Act, the company may be established with a majority of Thai shareholders so that the Act does not apply to its business.

Historically, such companies have often been established with different classes of shares issued to the foreign and Thai shareholders. The shares issued to the foreigners would carry rights that allow them to effectively control the day-to-day operations of the company. The shares could also carry superior rights to dividends and liquidation distributions. The interest of the majority Thai shareholder(s) is therefore akin to that of a passive investor.

In 2007, there were amendments to the Act, including a change to the definition of "foreigner". Under the proposed new definition of "foreigner", a Thai company with foreign individuals or companies that have the power by law, the articles of association or by way of agreement to cast half or more of the votes of the company, will be deemed a foreigner under the Act.

Presently, a Thai juristic person that is not a foreigner as defined under the previous FBA but is a foreigner as redefined under the new Act and operates a business of the type as prescribed in the Lists attached to the new Act on the date it comes into force, shall notify the Director-General of Department of Business Development in accordance with the criteria and procedures set forth by the Director-General in order to obtain a certificate if such juristic person intends to continue operating such a business.





PERMANENT ESTABLISHMENT IN THAILAND: BRANCH OR SUBSIDIARY?

DEFINITION OF A PERMANENT ESTABLISHMENT

PERMANENT ESTABLISHMENT: In Thailand, the term PERMANENT ESTABLISHMENT (PE) is usually used for consideration of foreign company domiciled in those 60 countries which have double taxation agreement with the Thai government, to ensure whether their business operations is subject to be PE risk or not.

In most DTA agreements the term means a fixed place of business through which the business of an enterprise is wholly or partly carried on. This includes a place of management, a branch, an office, a factory, a workshop, a warehouse - in relation to a person performing storage facilities for others, and a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources. The term also encompasses sites of construction, assembly or installation projects or supervisory activities in connection therewith or an installation or drilling rig or ship used for the exploration or exploitation of natural resources, furnishing of services and consultant services for a certain period of time which varies in each participating countries. Overall, this PE term covers any foreigner having its assets, agent, and activities for its operation in Thailand.

DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

BRANCH: A branch represents a 100% foreign owned entity by overseas Head Office which would like to conduct its business activities in Thailand, such as a contract project or trading office, usually being allowed to operate for a period of five years, unless a shorter period is indicated in the application as a result of a contract to be performed in Thailand.

Before commencement of activity, it is required to apply for a Commercial Registration Certificate and Alien Business License (if any) with the Ministry of Commerce. The time for this process is about 6 months.

SUBSIDIARY: A subsidiary is a registered limited company under the Civil and Commercial Code of Thailand (private or public) which is wholly owned or being influenced by a parent company in abroad. Being a private limited company in Thailand needs at least 3 shareholders and a public company needs at least 15 shareholders. It is also needed to apply for an Alien Business License if its business activity falls some categories under FBA (Foreign Business Acts). In being a limited company, this takes a shorter period of time for registration than a branch office.

Main Differences Between a Branch and a Subsidiary:

1. Registration process: A subsidiary needs at least 3 shareholders, but none are required for a branch. A subsidiary takes only a one month registration process, whereas a branch may take about 3-6 months for registration depending on the activity operated.

Both of them must apply for an Alien Business License if its business activity falls within some categories under FBA (Foreign Business Acts), as well as applying for a Taxpayer Identification Card and Value Added Tax Registration with the Revenue Department.

2. Operational period: A subsidiary is commonly used for those who desire a more permanent business in Thailand than a branch.
3. Secretarial process: For annual statutory filing, a subsidiary needs to prepare minutes of ordinary shareholder



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meetings for approval of the annual audited financial statements. This is not required for a branch.

4. Promotional privilege: The Investment Promotion Acts indicate that only Thai-registered companies will be granted promotional privileges by the Board of Investment.
5. Tax Investigation process: Mostly, tax officers will concentrate on sharing expenses between Head Office and worldwide branches, which is a normal concept for multi-national entities.
6. Winding up process: A subsidiary must apply for liquidation process with the Ministry of Commerce, while a branch can liquidate when its license period has expired and no renewal for such certificate.

TAX AND ACCOUNTING OBLIGATIONS

In Thailand, both subsidiary and branch will use the same tax and accounting laws and regulations, such as Revenue Code, Accounting Acts, Civil and Commercial Code, and Labor Law.

REGISTRATION FORMALITIES

Most business activities operated in the form of branch or subsidiary fall within the scope of one or more laws or regulations which require special regulation or license (e.g., value added tax registration, taxpayer identification card, Commercial Registration Certificate, alien business license, etc.) before the commencement of activities.

Foreign business establishments must therefore follow generally applicable procedures. If the intended activity falls under the Foreign Business Acts (FBA), the entity must apply for an alien business license prior to performing any of the intended activities.

BRANCH: A condition for approval of a Foreign Business License for a branch of a foreign corporation is that minimum capital amounting to no less than five million baht be brought into Thailand within four years of start-up. The branch may be allowed to operate for a period of five years, unless a shorter period is applied for. Extension of the original duration of the license to operate may be granted, provided that the working capital to be brought into Thailand requirement is met.

SUBSIDIARY: A foreign-owned Thai company should have the minimum capital used for the business operation in Thailand at least THB 2 million. If the business requires an alien business license (ABL) under the FBA, the company must have minimum capital of not less than 25 percent of the annual average of the first three years' estimated expenditures or THB 3 million, whichever is higher. One of the mandatory conditions under the ABL is that the total debt financing used in the business shall not exceed seven times the portion of the capital owned by the shareholders or owners of the business.

STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

A branch office of a foreign company is required to be registered with the Ministry of Commerce in Thailand. The registration of a branch is more costly and time consuming than registering a Thai company limited.

The main drawback with a registered branch in Thailand is that the branch is considered as the same entity as its foreign head office, which subjects the foreign head office to legal liability for actions of the branch in Thailand.

The main attractive benefit of registering a branch in Thailand is the appropriate allowance of expense allocations to be made by the foreign head office to the Thailand branch.



HOW TO HIRE MY FIRST EMPLOYEE IN THAILAND

MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

In Thailand, there are a few other steps you'll need to take to ensure you meet the legal, regulatory and tax obligations of being a new employer.

1. Apply for an Employer Identification Number
 - This is used to report the taxes you withhold on behalf of employees
2. If your firm would like to employ an expatriate, please ensure that the following conditions comply with the rules and regulations required to apply for a work permit.
 - Capital registered
 - Number of Thai staff employed
 - Staff position and qualification of expatriate must serve the business and not able to be filled by a capable Thai applicant
3. Employment Contract
4. Register as "Employer" for Social Security Fund (SSF)
 - After employing your first employee, the company has to register as employer for SSF
 - It is required to deduct SSF at the rate of 5% from the salary for not exceeding baht 15,000.
 - It is also required for the company to contribute the same amount payable to SSF within 15 days after end of the month.
5. Enroll in Workers' Compensation Fund
 - Compensation fund contribution payable annually at the rate specified depend on type of business or industry.
 - Compensation contribution calculated from total salary payment to each staff not exceeding baht 20,000 per month, multiplied by the compensation fund rate.
6. Register the company rules and regulations compliance with labor law
7. Deduct income tax from monthly staff salaries as prescribed by the Revenue Department and submit to the Revenue Department

DESIGN AND CONTENTS OF AN EMPLOYMENT CONTRACT

EMPLOYMENT CONTRACT

(สัญญาจ้างงาน)

1. The Parties

Mr./Miss/Mrs. _____, called hereinafter "The Employee" and Mr./Miss/Mrs. _____, called hereinafter "The Employer" have entered into contract concerning _____ position required by SMT Industry Service Co., Ltd. called hereinafter "The Company". The Company represented by Mr./ Miss/ Mrs. _____. The representative of the Company can be changed by written notice given by the Company.

(1. คู่สัญญา

นาย/นาง/นางสาว _____, จากนั้นไปเรียกว่า "ลูกจ้าง" และ นาย/นาง/นางสาว _____, จากนั้นไปเรียกว่า "นายจ้าง" ได้ตกลงกันทำ



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สัญญาจ้างงานในตำแหน่ง _____ ตามความต้องการของบริษัท
_____ จำกัด จากนั้นไปเรียกว่า "บริษัท" โดย นาย/นาง/นางสาว _____ เป็น
ตัวแทนของบริษัท โดยที่ตัวแทนของบริษัทสามารถเปลี่ยนแปลงได้โดยมีหนังสือเป็นลายลักษณ์อักษรจากบริษัท)

2. Validity and Liability

This contract becomes valid from _____ to _____, provided the Employee has been found fully capacitated with regards to working skills, healthy and legal requirements set by the Royal Thai Government.

(2. การมีผลบังคับและข้อผูกพัน

สัญญาฉบับนี้จะมีผลบังคับนับตั้งแต่วันที่ _____ ถึง _____ โดยมีเงื่อนไขว่าลูกจ้างได้แสดงให้เห็นว่าเป็นบุคคลที่มีความเหมาะสม ทั้งทางด้านทักษะในการทำงาน สุขภาพ และเป็นผู้มีคุณสมบัติตามข้อกำหนดกฎหมายไทย)

3. Remuneration & Working Day & Time

The work start/s/end on _____ to _____. Salary _____ Baht/
Month, Commission _____, Gasoline _____, Mobile _____, Other _____.
Working days of each week are Monday to Saturday. Working hours is 8.30-12.00 AM. and 13.00-17.30 PM. Working time on Saturday is 8.30-12.00 AM.

(3. รายละเอียดค่าจ้างวันและเวลาปฏิบัติงาน

การปฏิบัติงานวันที่เริ่ม ณ วันที่ _____ สิ้นสุด _____
เงินเดือน _____ บาทต่อเดือน ค่านายหน้า _____ ค่าน้ำมัน _____
ค่าโทรศัพท์ _____ อื่น _____
วันทำงานในแต่ละสัปดาห์ ได้แก่ วันจันทร์-เสาร์ เวลาทำงานตั้งแต่ 8.30-12.00 นาฬิกา และ 13.00-17.30 นาฬิกา เวลาทำงานในวันเสาร์ ตั้งแต่ 8.30-12.00 นาฬิกา)

4. Termination and Alternations

Either party can terminate this agreement with one-month notice in advance.

(4. การสิ้นสุดและการเปลี่ยนแปลงแก้ไข

คู่สัญญาฝ่ายใดฝ่ายหนึ่งสามารถบอกเลิกข้อตกลงนี้ได้โดยการแจ้งล่วงหน้า 1 เดือน)

5. Arbitration

Any disputes over the interpretation or application of the contract shall be according to the Thai Law.

(5. การตัดสินข้อพิพาท

ข้อพิพาทใดๆ เกี่ยวกับการตีความหรือการใช้สัญญานี้ให้เป็นไปตามการตัดสินความภายใต้กฎหมายไทย)

This contract is made in duplicate with each party retaining one copy. Both parties have read and understood the contents of this agreement hereunto affix their signatures as important evidence.

(สัญญาฉบับนี้ได้ทำขึ้นเป็นสองฉบับ ให้แต่ละฝ่ายยึดถือไว้ฝ่ายละหนึ่งฉบับ ทั้งสองฝ่ายได้อ่านและเข้าใจข้อความในสัญญาโดยตลอด จึงลงลายมือชื่อไว้เป็นหลักฐานสำคัญ)

Date / วันที่ _____

Date / วันที่ _____

Signed / ลายมือชื่อ _____
(The Employee / ลูกจ้าง)

Signed / ลายมือชื่อ _____
(The Employer / นายจ้าง)

CAN SOMEBODY DO BUSINESS FOR ME AND NOT BE AN EMPLOYEE?

- You can appoint someone/professional firm as "Consultant" or "Outsourcing" within the scope of work. The service period and remuneration are subject to terms and conditions as agreed by both parties.
- This is considered as a hire of work agreement, not an employment contract which is non compliant with labor laws.





HOW TO READ FINANCIAL STATEMENTS IN THAILAND

บริษัท ตัวอย่าง จำกัด	SAMPLE COMPANY LIMITED		
งบแสดงฐานะการเงิน	STATEMENTS OF FINANCIAL POSITION		
ณ วันที่ 31 ธันวาคม 2557 และ 2556	AS AT 31st DECEMBER 2014 and 2013	2014	2013
		Thai Baht	Thai Baht
สินทรัพย์	Assets		
สินทรัพย์หมุนเวียน	Current assets		
เงินสดและรายการเทียบเท่าเงินสด	Cash and cash equivalents		
เงินลงทุนชั่วคราว	Temporary investments		
ลูกหนี้การค้า และลูกหนี้อื่น	Trade and other receivables		
เงินให้กู้ยืมระยะสั้น	Short-term loans		
สินค้าคงเหลือ	Inventories		
สินทรัพย์หมุนเวียนอื่น	Other current assets		
รวมสินทรัพย์หมุนเวียน	Total current assets		
สินทรัพย์ไม่หมุนเวียน	Non-current assets		
เงินลงทุนเพื่อขาย	Available-for-sale investments		
เงินลงทุนในบริษัทร่วม	Investments in associates		
เงินลงทุนในบริษัทย่อย	Investments in subsidiaries		
เงินลงทุนในกิจการร่วมค้า	Investments in joint ventures		
เงินลงทุนระยะยาวอื่น	Other long-term investments		
เงินให้กู้ยืมระยะยาว	Long-term loans		
อสังหาริมทรัพย์เพื่อการลงทุน	Investment property		
สินทรัพย์ไม่หมุนเวียนที่ถือไว้เพื่อขาย	Non-current assets classified as held for sale		
ที่ดิน อาคารและอุปกรณ์	Property, plant and equipment		
สินทรัพย์ไม่มีตัวตน	Intangible assets		
สินทรัพย์ภาษีเงินได้รอการตัดบัญชี	Deferred tax assets		
สินทรัพย์ไม่หมุนเวียนอื่น	Other non-current assets		
รวมสินทรัพย์ไม่หมุนเวียน	Total non-current assets		
รวมสินทรัพย์	Total assets		



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บริษัท ตัวอย่าง จำกัด	SAMPLE COMPANY LIMITED		
งบแสดงฐานะการเงิน	STATEMENTS OF FINANCIAL POSITION		
ณ วันที่ 31 ธันวาคม 2557 และ 2556	AS AT 31st DECEMBER 2014 and 2013	2014	2013
		Thai Baht	Thai Baht
หนี้สินและส่วนของผู้ถือหุ้น	Liabilities and equity		
หนี้สินหมุนเวียน	Current liabilities		
เงินเบิกเกินบัญชีและเงินกู้ยืมระยะสั้นจากสถาบันการเงิน	Bank overdrafts and short-term borrowings from institutions		
เจ้าหนี้การค้าและเจ้าหนี้อื่น	Trade and other payables		
ส่วนของหนี้สินระยะยาวที่ต้องกำหนดชำระภายในหนึ่งปี	Current portion of long-term liabilities		
เงินกู้ยืมระยะสั้น	Short-term borrowings		
ภาษีเงินได้ค้างจ่าย	Current Income tax payable		
ประมาณการหนี้สินระยะสั้น	Short-term provisions		
หนี้สินหมุนเวียนอื่น	Other current liabilities		
รวมหนี้สินหมุนเวียน	Total current liabilities		
หนี้สินไม่หมุนเวียน	Non-current liabilities		
เงินกู้ยืมระยะยาว	Long-term borrowings		
หนี้สินภาษีเงินได้รอการตัดบัญชี	Deferred tax liabilities		
ภาระผูกพันผลประโยชน์พนักงาน	Employee benefit obligations		
ประมาณการหนี้สินระยะยาว	Long-term provisions		
หนี้สินไม่หมุนเวียนอื่น	Other non-current liabilities		
รวมหนี้สินไม่หมุนเวียน	Total non-current liabilities		
รวมหนี้สิน	Total liabilities		



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บริษัท ตัวอย่าง จำกัด	SAMPLE COMPANY LIMITED		
งบแสดงฐานะการเงิน	STATEMENTS OF FINANCIAL POSITION		
ณ วันที่ 31 ธันวาคม 2557 และ 2556	AS AT 31st DECEMBER 2014 and 2013	2014	2013
		Thai Baht	Thai Baht
ส่วนของผู้ถือหุ้น	Shareholder's equity		
ทุนเรือนหุ้น	Share capital		
ทุนจดทะเบียน	Authorised share capital		
หุ้นบุริมสิทธิ	Preference shares		
หุ้นสามัญ	Ordinary shares		
ทุนที่ชำระแล้ว	Paid-up share capital		
หุ้นบุริมสิทธิ	Preference shares		
หุ้นสามัญ	Ordinary shares		
ส่วนเกินมูลค่าหุ้น	Share premium account		
ส่วนเกินมูลค่าหุ้นบุริมสิทธิ	Share premium account - Preference shares		
ส่วนเกินมูลค่าหุ้นสามัญ	Share premium account - Ordinary shares		
กำไร (ขาดทุน) สะสม	Retained earnings		
จัดสรรแล้ว	Appropriated		
ทุนสำรองตามกฎหมาย	Legal reserve		
อื่นๆ	Others		
ยังไม่ได้จัดสรร	Unappropriated		
องค์ประกอบอื่นของส่วนของผู้ถือหุ้น	Other components of shareholders' equity		
รวมส่วนของผู้ถือหุ้น	Total shareholder's equity		
รวมหนี้สินและส่วนของผู้ถือหุ้น	Total liabilities and equity		



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บริษัท ตัวอย่าง จำกัด	SAMPLE COMPANY LIMITED		
งบกำไรขาดทุน	STATEMENTS OF EARNINGS		
สำหรับปีสิ้นสุดวันที่ 31 ธันวาคม 2557 และ 2556	FOR THE YEARS ENDED 31st DECEMBER 2014 and 2013		
		2014	2013
		Thai Baht	Thai Baht
รายได้	Revenue		
รายได้จากการขาย	Revenue from sales		
รายได้จากการให้บริการ	Revenue from services		
รายได้อื่น	Other income		
รวมรายได้	Total revenue		
ค่าใช้จ่าย	Expenses		
ต้นทุนขาย	Cost of sales		
ต้นทุนการให้บริการ	Cost of services		
ค่าใช้จ่ายในการขาย	Selling expenses		
ค่าใช้จ่ายในการบริหาร	Administrative expenses		
ค่าใช้จ่ายอื่น	Other expenses		
รวมค่าใช้จ่าย	Total expenses		
กำไร (ขาดทุน) ก่อนต้นทุนทางการเงินและค่าใช้จ่า	Profit (loss) before finance costs and income tax expenses		
ต้นทุนทางการเงิน	Finance costs		
กำไร (ขาดทุน) ก่อนค่าใช้จ่ายภาษีเงินได้	Profit (loss) before income tax expenses		
ค่าใช้จ่ายภาษีเงินได้	Income tax expenses		
กำไร (ขาดทุน) สุทธิสำหรับปี	Net Profit (loss)		