


Guide to Choice of Business Entity Structure in Thailand



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In addition to taxation considerations, a foreigner's choice of the type of business entity structure for their operations in Thailand depends very much on foreign ownership restrictions that are imposed under the Foreign Business Act.

Foreign ownership restrictions

The Foreign Business Act BE 2542 ("FBA") in Thailand restricts foreigners to a maximum of 49% of the issued capital in most kinds of business operations (other than manufacturing).

Manufacturing operations are not covered by the FBA, and foreigners generally have freedom to operate such businesses in Thailand.

A maximum of 49% ownership applies to three groups of business types, which are prescribed in the FBA as follows:

1. Business operations that are not permitted due to special reasons – these operations include media, agriculture, primary industry production and trading in real estate (land);
2. Business operations relating to national safety and security, arts, culture and the extraction of natural resources; and
3. Business operations that Thai nationals are not yet ready to compete with foreigners – this third group includes just about every type of service business.

Business operations that are promoted by the Thailand Board of Investment may be permitted 100% foreign ownership, and business operations wholly owned by US corporations or US nationals may also be permitted 100% foreign ownership.

Sole traders and partnerships

Because of the ownership restrictions, foreigners are not generally able to (and nor do they wish to) operate a Thailand business operation as a sole trader or as a partnership.

Private limited companies

To operate a restricted business operation as a Thai private limited company, a foreigner is limited to 49% ownership of the issued capital of the private limited company.

A Thai private limited company must issue at least 51% of its issued share capital to Thai individuals or other Thai companies (that is, foreigners are suppose to participate as joint venture partners in a Thailand private limited company).

Branch offices

A branch office is the same legal entity as its foreign head office company, and thus, operations of branch offices are restricted under the provisions of the FBA.

To operate a restricted business as a branch office in Thailand, the foreign head office must make a special application to the Ministry of Commerce for a Foreign Business License. Such applications must pass the requirements of the Foreign Business Committee and must be approved by the Director-General of the Business Development Department. Unless a foreign head office company has a specific supply or services contract to perform work for a Government agency or a reputable Thai company, branch office registrations can be difficult to obtain.

Representative offices

In terms of its legal structure, ownership and minimum capital requirements, a representative office is virtually the same as a branch office, and similarly, a special application for a Foreign Business License to conduct a representative office operation must be made to the Foreign Business Committee.

However, whereas a branch office performs business activities and earns income, a representative office is not permitted to undertake any commercial business activity and is not permitted to earn any income.

But a representative office is the right structure choice for the following non-revenue-earning activities:

- Sourcing of goods and services in Thailand for the head office;
- Checking and controlling the quality and quantity of goods purchased or manufactured in Thailand for the head office;
- Providing advice concerning head office goods or services sold to agents or consumers in Thailand;
- Propagation of information concerning new goods or services of the head office; and
- Reporting on business trends in Thailand to the head office.

Joint ventures

A joint venture is a business operation that is carried on jointly by a company with another company, by a company with a partnership, by a partnership with another partnership, or by a company or partnership with an individual or a group of individuals.

A joint venture is recognized as a tax entity under the Thai tax laws, but it is not a legal entity. Unless a joint venture is an incorporated joint venture (i.e. a Thailand private limited company), rarely do foreigners operate business activities as a joint venture.

Consortiums

Conducting a business operation as a partner in a consortium is quite common in Thailand for the large construction and infrastructure projects.

But a consortium is not either a tax nor a legal entity, and every company in the consortium is treated as its own independent legal entity, which must account for its own income and taxes, etc.

Accordingly therefore, when a foreign company is a partner in a consortium, it must, similarly to branch and representative offices, make a special application for a Foreign Business License to conduct business in Thailand.

Regional operating headquarters

A foreign company conducting business operations in at least three other countries (besides Thailand) in the SEA region is able to establish a Regional Operating Headquarters (ROH) in Thailand.

An ROH is the same legal structure as a Thai private limited company, but foreigners are afforded 100% ownership of the capital of the company, which must be established for the purposes of rendering services to affiliated companies and branches in the SE Asia region. Lucrative tax benefits can be obtained if two major requirements are met:

- The services rendered by the ROH must be one or more of the types permitted by the Thailand Revenue Department; and
- Not less than 50% of the total income of the ROH must be earned from rendering permitted services to affiliates and branches outside Thailand (this is reduced to 1/3rd for the first 3 years of operation).

Minimum capital requirements

The Thai law prescribes a minimum capital amount of only THB 35 (approximately \$1) for a Thailand private limited company, but in practice, such a shareholding structure will not be acceptable to the Commerce Ministry officials, who require the share capital amount to be sufficiently large enough in order to enable the company to accomplish its objectives. The amount of the share capital for a Thai private limited company is very much determined by the number of work permits required for the foreigners coming to Thailand to work for the company – THB 2 million of capital is required for each foreigner work permit application.

For branch offices, representative offices and foreign company consortium offices in Thailand, the minimum capital requirement is determined at 25% of the estimated average annual operating expenses of the operation calculated over three years. Such calculated amount of capital shall not be less than THB 3 million.

For an ROH, the minimum capital requirement is THB 10 million.

Income tax considerations

Thai private limited companies are subject to tax on all income earned from worldwide sources (i.e. from both sources within Thailand and outside Thailand).

Unless a Thai private limited company is structured as an SME (see below), the rate of tax payable by a Thai private limited company is 30% of net profits earned, and remittances of after-tax net profits (dividends) to any foreign company or foreign individual shareholder are subject to 10% withholding tax, making the total tax payable on income earned and remitted 37%.

Thai branches are subject to the same tax rates as private limited companies, but instead of a branch's profit being determined on a worldwide basis, a branch pays income tax only on income derived from sources within Thailand.

An SME (Small and Medium Enterprise) is subject to tax in Thailand at reduced rates, as follows:

Taxable Income (THB)		Tax Rate
From	To	
1	150,000	0%
150,001	1,000,000	15%
1,000,001	3,000,000	25%
3,000,001	-	30%

To qualify as an SME, a Thai private limited company must limit the amount of its paid-up capital to not more than THB 5 million.

If a foreigner limits the amount of paid-up capital in a Thai private limited company to THB 5 million, then the foreigners can enjoy the lower SME rates of tax.

A representative office, which complies with the rules and regulations for its non-revenue-earning activities, is not subject to income tax in Thailand. That is, the non-revenue-earning activities are exempt from tax but any other income earned, such as interest income, still remains subject to the 30% standard tax rate plus the standard 10% profits-remittance tax rate.

An ROH, which complies with the rules and conditions concerning its services, is subject to a special tax rate of 10% on net profits, and no tax on remittances of net profits.

Value added tax considerations

Value added tax (VAT) is levied at the rate of 7% on the value of most goods sold or services rendered and imported. Only a limited number of business activities are exempt from VAT in Thailand.

Accordingly, Thai private limited companies, branches and ROHs are generally required to register as VAT operators and account for and remit VAT payments to the Revenue Department.

A representative office however, provided it complies with the rules and conditions for non-revenue-earning activities, is generally not liable to register for VAT and is not liable to remit VAT to the Revenue Department.

Accounting, audit & reporting considerations

Finally, you should note that Thailand Accounting Act prescribes that all of the above business entities are required to maintain books of accounts and supporting records, and prepare annual financial statements in accordance with the Thai Accounting Standards.

The Thai Accounting Act also stipulates that an entity bookkeeper (accountant) shall be a qualified Bachelor of Accounting, and the financial statements prepared by the bookkeeper (accountant) shall be audited by a qualified auditor and filed with the Commerce Ministry.

The information herein was contributed by Steven Herring, an experienced and Senior International Tax Consultant, for RSM Advisory (Thailand) Limited.

RSM Thailand

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The RSM service line leaders in Thailand are:

Corporate Advisory

Gareth.Hughes@rsmthailand.com

Accounting & Tax Compliance

Mark.Butters@rsmthailand.com

Executive Recruitment

Mike.Holloway@rsmthailand.com

Business Services & Legal

Pardorn.Suchiva@rsmthailand.com

Audit & Assurance

Prawit.Wipusirikup@rsmthailand.com

Taxation Consulting

Steven.Herring@rsmthailand.com

Audit & Assurance

Surachai.Damnoenwong@rsmthailand.com

We welcome your comments and feedback. Please feel free to contact us as follows:

RSM Thailand
26th Floor, Sathorn City Tower
175 South Sathorn Road
Bangkok 10120
Thailand

T: +66(0) 2670 9002-6

F: +66(0) 2670 9027-8

E: AskUs@rsmthailand.com

W: www.rsmthailand.com

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