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Memo: Establishing a corporate set-up in Thailand

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A. Introduction



We are happy to guide and assist you in establishing a business presence in Thailand.

Foreign individuals or companies are generally required to register a legal presence in Thailand in order to conduct business in the country. The relevant legal provisions can be found in various laws, such as the Thai Civil and Commercial Code B.E. 2535 (1992) and the Foreign Business Act B.E. 2542 (1999), which set out the requirements for foreigners wishing to establish a place of business or carry on business in Thailand.

In general, foreign investors tend to establish a Limited Company for their business activities in Thailand. However, certain business activities are prohibited or restricted for foreign companies. As a first step, it is therefore important to determine whether a company qualifies as “foreign” under Thai law.

B. Types of legal structures

	Limited Company	Branch Office	Rep. Office	Regional Office
Capital/Investment requirement	At least THB 10 Special rules apply to foreign-owned companies	At least 25% of the estimated average annual operating costs for the first 3 years, but generally not less than THB 3 million	At least THB 2 million	At least THB 2 million
Number of shareholders	Minimum of 2 Shareholders	N/A	N/A	N/A
Officers	Minimum of 1 Director	1 authorised officer	1 authorised officer	1 authorised officer
Business activities	Any business activities in accordance with the laws of Thailand and as prescribed in its registered business objectives	Any business activities as prescribed in its Foreign Business License	Restricted	Restricted
Allowed to generate income	Yes	Yes	No	No
Legal liability	Independent legal entity	No independent legal entity	No independent legal entity	No independent legal entity
Tax liability	Subject to corporate income tax	Subject to corporate income tax	Not subject to corporate income tax (unless for interest accrued on funds received from the overseas corporation)	Not subject to corporate income tax (unless for interest accrued on funds received from the overseas corporation)

C. Registration of a business presence

Below is an overview of the types of legal structures typically available to foreign investors to operate their business in Thailand, namely the establishment of a subsidiary in the form of a private Limited Company or the registration of an overseas company in the form of a Branch Office, Representative Office or Regional Office.

1. Types of legal structures

1.1. Limited Company

Nature of a Limited Company

Generally, foreign investors tend to establish a private Limited Company for their business activities in Thailand.

A Limited Company is a fully fledged, independent legal entity that may carry on any legal business activity in accordance with the laws of Thailand and its registered business objectives.

A Limited Company must have at least two shareholders, either natural persons or legal entities (e.g. another Limited Company). There are no minimum share capital requirements other than a minimum registered par value of THB 5 per share.

While the Thai Civil and Commercial Code B.E. 2535 (1992) does not distinguish between Thai and foreign shareholding, there are restrictions on the business activities that can be carried out by foreigners in Thailand. Under the Foreign Business Act B.E. 2542 (1999), foreign ownership of a Thai company is generally limited to 49% of the total shares of the company. The remaining 51% of the shares must be held by Thai nationals or majority Thai owned companies.

There are, however, some exceptions to this rule. For example, the Board of Investment allows up to 100% foreign ownership for companies investing in business activities that are deemed important for the development of Thailand: a foreign-owned Limited Company must generally have a minimum registered and paid-up capital of THB 2,000,000. If such a company engages in activities restricted under the Foreign Business Act B.E. 2542 (1999), it must have a minimum capital of THB 3,000,000.

A Limited Company must also appoint at least one director, who must be a natural person (who can be either a Thai citizen or a foreigner), to manage the business of the company under the supervision of the general meeting. In managing the

business, the directors (or the sole director) may exercise all the powers of the Limited Company, subject to any powers that must be exercised by the shareholders as expressly provided by law or the articles of association.

All net profits of a Limited Company derived from business activities in Thailand and foreign income - if remitted to Thailand - are generally subject to corporate income tax at 20%. Exemptions may apply if a Limited Company qualifies for tax incentives under the Investment Promotion Act B.E. 2520 (1977), business support schemes or under a double taxation treaty.

From the date of incorporation, a Limited Company must have a registered office in Thailand to which all official notices and communications may be addressed.

In addition, a Limited Company may (but is not required to) appoint a company secretary. The company secretary is responsible for keeping proper corporate records and maintaining the required corporate registers and corporate filings as required by law. To ensure the timely performance of these duties, it is common practice in Thailand for external lawyers or service providers to act as company secretaries. Luther also offers full company secretarial services.

Formation of a Limited Company

It usually takes two to three weeks to incorporate a Limited Company using standard documents. However, the Ministry of Commerce also offers alternative and faster legal registration options (e.g. one-day registration).

Here are the basic steps to incorporate a Limited Company:

Step 1: Reserve a company name

The first step in the incorporation process is to select a name for the Limited Company and apply for its reservation through the online registration system of the Department of Business Development (DBD) of the Ministry of Commerce. The DBD will review the application and determine whether the chosen name is available (which is the case if a similar name has not already been reserved and if the name does not contravene any official regulations). This process normally takes one to three working days.

If available, DBD will reserve the name for the company for a period of 30 calendar days, during which time the application for incorporation of the Limited Company must be submitted.

Step 2: Submitting the Memorandum of Association

Once the company name has been reserved, the Memorandum of Association must be filed with the DBD.

A Limited Company may choose to use the model Memorandum of Association published by the Ministry of Commerce or to use its own customised Memorandum of Association, which must contain the following minimum requirements:

- Name of the Limited Company;
- Address of the registered office;
- Business objectives;
- Declaration that the liability of each shareholder is limited to the amount unpaid;
- Registered capital; and
- Details of promoters.

If the standard Memorandum of Association is used (which can of course be amended at a later date), it will normally take one working day to review and approve. If a bespoke Memorandum of Association is used, the process may take considerably longer.

Please note that the original Memorandum of Association must be signed by at least two promoters, who must be Thai citizens or foreigners (i.e. not companies).

Step 3: Subscription of shares

The promoters must be among the initial shareholders of the Limited Company, each holding at least one share, and may offer additional shares to other shareholders.

Upon the successful incorporation of the Limited Company, the promoters can immediately transfer their shares to the other existing shareholders or to third parties.

Step 4: General meeting

After the shares have been subscribed, the promoters must immediately convene a statutory meeting of the Limited Company. Although not mentioned in the notice, the business of this statutory meeting must include the following:

- Adoption of the Memorandum of Association and the Articles of Association;
- Election of director(s); and
- Appointment of auditor.

Where appropriate, the business of the statutory meeting may also include the adoption of regulations, the ratification of contracts entered into by the promoters and any expenses incurred by them, the fixing of amounts to be paid to the promoters, the fixing of the number of preference shares to be issued and the nature and extent of the preferential rights attaching thereto, the fixing of the number of ordinary shares or preference shares to be allotted as fully or partly paid up otherwise than in money, and the amount to which they shall be deemed to be paid up, and the description of the services or property in consideration of which such ordinary shares are to be allotted as paid up in preference to the preference shares.

Step 5: Payment of share capital

With the election of the director(s), the business of the company is managed by or under the direction of the board of directors or, in the case of a single director company, the single director.

The board invites prospective shareholders (including promoters) to pay up at least 25% of their subscribed shares.

Step 6: Registration of the Limited Company

After holding the statutory meeting, the directors must apply to the DBD for registration of the Limited Company within three months.

Tax registration

Previously, a Limited Company had to apply to the Revenue Department for tax registration within 60 days of incorporation or commencement of business. This is no longer necessary as the company registration number issued by the DBD is automatically linked to the Revenue Department's tax filing system.

A Limited Company may also need to apply for a value added tax (VAT) registration. This is usually the case if it sells goods and/or provides services in Thailand with a value exceeding THB 1,800,000 per financial year. The registration must be submitted within 30 days from the date of exceeding this threshold.

Government fee

The government fee for setting up a Limited Company is currently a flat rate of THB 5,500 plus a certification fee and stamp duty of approximately THB 1,000.

1.2. Branch Office

Nature of a Branch Office

There are no specific requirements for a foreign company to register a branch in Thailand. However, most business activities will require some form of registration (e.g. VAT registration, Taxpayer Identification Card, Business Registration Certificate, Foreign Business Licence), which will require the registration of a Branch Office.

A branch can act independently and engage in legitimate profit-making activities (i.e. the branch's business activities are not limited to providing services to the foreign company and/or its subsidiaries).

However, a branch is not treated as a separate legal entity from the overseas company it represents. Consequently, all contracts entered into by the Branch Office and the legal obligations, debts and liabilities arising therefrom will be binding on and enforceable against the Overseas Corporation.

The investment by the foreign company in the branch office must be at least 25% of the estimated average annual operating costs for the first three years, but not less than THB 3,000,000. The period during which this investment must be made is mandatory and cannot be changed.¹

The foreign company must appoint an authorised officer who is authorised to accept service of documents in Thailand on behalf of the foreign company; further powers may be granted by the foreign company by way of a power of attorney. If required, Luther can provide a local officer.

For tax purposes, a branch is treated as a foreign company. All profits derived from Thailand are taxed at a rate of 20%.

In addition, the branch office must prepare a technology transfer report (unless it is providing services to a government agency or state-owned enterprise) and audited financial

statements in respect of its operations in Thailand, which must be filed with both the DBD and the Revenue Department.

Formation of a Branch Office

A Branch Office must be registered with the DBD and may be subject to the provisions of the Foreign Business Act B.E. 2542 (1999).

The following documents are required for the registration of a Branch Office:

- Memorandum and Articles of Association (by-laws) of the overseas corporation;
- Audited financial statements of the overseas corporation;
- Power of attorney appointing a Branch Office manager;
- Copy of the ID/passport of the Branch Office manager;
- Affidavit of company office;
- Sketch map showing location of company office; and
- Business plan and supporting documents for business activities (e.g. contract, business profile, expenditure and investment plan).

All documents must be notarised by a notary public and legalised by a Thai Embassy (issued not later than within six months of the date of application for the registration of the Branch Office in Thailand). All documents must be submitted in Thai. Hence, if the original documents (e.g. Memorandum and Articles of Association) are in another language, a certified translation must be provided. We can arrange for a translation into Thai language, if required.

Tax registration

The 13-digit registration number issued by the DBD is also the tax registration number of the Branch Office.

The Branch Office may also need to apply for a VAT registration (please see above).

Government fee

The official registration fee depends on the registered capital of the Branch Office and is calculated at THB 5 per THB 1,000 of the registered capital of the overseas corporation (with a

¹ If a branch office provides services to a government entity, it shall be exempted from the requirement to obtain a Foreign Business License by virtue of the Ministerial Regulation re Servicing Business Exempted from Applying for a Foreign Business License (no. 3) B.E. 2560 (2017). Further, the required investment capital is reduced to THB 2,000,000 only.

minimum fee of THB 20,000 and a maximum fee of THB 250,000).

Exemptions apply if the branch provides services to a government agency or state-owned enterprise.

1.3. Representative Office

Nature of a Representative Office

An overseas corporation may also choose to register a Representative Office in Thailand to provide services to the head office or group companies. However, like a branch office, the main disadvantage is that a representative office is not a separate legal entity and therefore its liabilities cannot be limited.

One further disadvantage is that the activities of a Representative Office are limited to the following:

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

A Representative Office is not allowed to carry out profit-making activities, but it can be used to explore the possibilities of doing business in Thailand (e.g. by testing the local business environment and relevant markets without yet having to make a serious investment). Furthermore, while many business activities carried out by a foreigner or a foreign-owned company in Thailand are restricted by the Foreign Business Act B.E. 2542 (1999) and may require a Foreign Business License, a Representative Office is exempted from this requirement.

The investment by the overseas corporation for the Representative Office must be at least THB 2,000,000.

The overseas corporation must appoint an authorised officer (please see above).

Though a Representative Office cannot generate any income, it may still be subject to corporate income tax (e.g. for interest accrued on funds received from the overseas corporation).

Formation of a Representative Office

To register a Representative Office with the DBD, the following documents must be provided:

- Memorandum and Articles of Association (by-laws) of the overseas corporation;
- Power of attorney appointing a Representative Office manager;
- Copy of the ID/passport of the Representative Office manager;
- Confirmation of Representative Office manager's salary;
- Affidavit of company office; and
- Sketch map showing location of company office.

All documents must be notarised by a notary public and legalised by a Thai Embassy (issued not later than within six months of the date of application for the registration of the Representative Office in Thailand). All documents must be submitted in Thai language. Hence, if the original documents (e.g. Memorandum and Articles of Association) are in another language, a certified translation must be provided. We can arrange for a translation into Thai language, if required.

Government fee

There is no official fee for the registration of a Representative Office.

1.4. Regional Office

Nature of a Regional Office

An overseas corporation, which is from or already has an affiliate or branch office in the Asian region, may also choose to register a Regional Office in Thailand. However, as in the case of a Branch Office and Representative Office, the main disadvantage is that a Regional Office is not a separate legal entity and its liabilities accordingly cannot be limited.

A further disadvantage is that the activities of a Regional Office are restricted to the following:

- Communicating, coordinating and directing the operation of branches and affiliates in the region;
- Providing services in consulting and management;
- Human resources training and development;
- Technical assistance;
- Financial management;
- Control of marketing and sales promotion planning;

- Product development; and
- Research and development services.

A Regional Office is not allowed to carry out any profit-making activities; further, it is not allowed to accept purchasing orders or to negotiate on behalf of or make offers for the sale of products/provision of services of the overseas corporation in Thailand. Whereas many business activities carried out by a foreigner or a foreign-owned company in Thailand are restricted by the Foreign Business Act B.E. 2542 (1999) and may require a Foreign Business License, a Regional Office is exempt from this requirement by virtue of the Ministerial Regulation re Servicing Business Exempted from Applying for a Foreign Business License (no. 3) B.E. 2560 (2017).

The investment by the overseas corporation for the Regional Office must be at least THB 2,000,000. The timeframe during which this investment must be made is mandatory and cannot be changed. In the case that the business is to operate in Thailand for less than three years, the minimum capital has to be fully remitted within the first six months of the business commencement.

The overseas corporation must appoint a Regional Office manager.

A Regional Office is not subject to corporate income tax (with the exception of interest accrued on funds received from the overseas corporation).

Formation of a Regional Office

A Regional Office must be registered with the DBD and may be subject to the provision of the Foreign Business Act B.E. 2542 (1999).

The following documents have to be provided for the registration of a Regional Office:

- Memorandum and Articles of Association (by-laws) of the overseas corporation;
- Power of attorney appointing a Regional Office manager;
- Copy of the ID/passport of the Regional Office manager;
- Confirmation of Regional Office manager's salary;
- Affidavit of company office; and
- Sketch map showing location of company office.

All documents must be notarised by a notary public or authenticated by a Thai Embassy (issued no later than within the last six months). Documents provided in a foreign language must be translated into Thai language and certified as a true and correct translation by a translator and the Regional Office manager.

Government fee

There is no official fee for the registration of a Regional Office.

2. Business activities restricted for foreigners

Thai law distinguishes between Thai and foreign-owned businesses, which may affect an investor's eligibility to engage in certain business activities in Thailand.

Under the current legal framework, some business activities do not require any special approval, while others are either completely prohibited or restricted (i.e. they usually require prior approval from a Thai authority) for foreigners.

2.1. Definition of foreigners

Under the Foreign Business Act B.E. 2542 (1999), the term "foreigner" means:

- (1) *A natural person who is not of Thai nationality;*
- (2) *A juristic person not registered in Thailand;²*
- (3) *A juristic person registered in Thailand, being of the following descriptions: (a) being a juristic person at least one half of capital shares of which are held by persons under (1) or*
- (4) *or a juristic person in which investment has been placed by the persons under (1) or (2) in the amount at least equivalent to one half of the total capital thereof; (b) being a limited partnership or a registered ordinary partnership the managing partner or the manager of which is the person under (1); or*
- (5) *A juristic person registered in Thailand at least one half of the capital shares of which are held by persons under (1), (2) or (3) or a juristic person in which investment has been*

² Such as an overseas corporation registered as a Branch Office, Representative Office or Regional Office in Thailand.

placed by the persons under (1), (2) or (3) in the amount at least equivalent to one half of the total capital thereof.

For the purpose of this definition, shares of a Limited Company represented by share certificates issued to bearers are deemed as shares held by foreigners, unless otherwise provided by Ministerial Regulation.

2.2. Foreign Business Act

The Foreign Business Act B.E. 2542 (1999) currently identifies the following types of business activities, which shall be prohibited or restricted for foreigners:

- Businesses that foreigners are not permitted to engage in for special reasons;
- Businesses concerning national security or safety that could have an adverse effect on art and culture, customs, or native manufacture/handicrafts, or with an impact on natural resources and the environment; and
- Businesses in which Thais are not ready to compete with foreigners.

List 1: Business activities not permitted to be carried-out due to special reasons

The following business activities are not permissible to be carried out by a foreigner:

- Press, radio broadcasting station or radio and television station business;
- Rice farming, plantation or crop growing;
- Livestock farming;
- Forestry and timber processing from a natural forest;
- Fishery, only in respect of the catchment of aquatic animals in Thai waters and specific economic zones of Thailand;
- Extraction of Thai medicinal herbs;
- Trading and auction sale of antique objects of Thailand or objects of historical value of the country;
- Making or casting Buddha Images and monk alms-bowls; and
- Land trading.

List 2: Businesses related to national safety or security, businesses having impacts on arts, culture, traditions, customs and folklore handicrafts or businesses having impacts on natural resources or the environment

The following business activities may generally not be carried out by a foreigner.

Exemptions shall however apply upon obtaining permission from the Council of Ministers and obtaining a Foreign Business License or Foreign Business Certificate. In addition, at least 40% of the shares of the Limited Company must be held by Thai shareholder(s). Further, the board of directors must have at least five members, of which two must be Thai citizens.

Businesses related to national safety or security

- Production, distribution and maintenance of:
 - Firearms, ammunition, gun powders and explosives;
 - Components of firearms, ammunition and explosives;
 - Armaments, ships, aircraft or vehicles for military use; and
 - Equipment or components of all types of war materials.
- Domestic transportation by land, water or air, including domestic aviation.

Businesses having impacts on arts, culture, traditions, customs and folklore handicrafts

- Trading of antiques or artistic objects that are artistic works or handicrafts of Thailand;
- Production of woodcarvings;
- Silkworm raising, production of Thai silk yarn, weaving of Thai silk or printing of Thai silk patterns;
- Production of Thai musical instruments;
- Production of gold ware, silverware, nielloware, bronzeware or lacquerware; and
- Production of crockery or porcelains representing Thai arts and culture.

Businesses having impacts on natural resources or the environment

- Production of sugar from sugar cane;
- Salt farming, including non-sea salt farming;
- Production of rock salt;
- Mining, including rock blasting or rock crushing; and
- Timber processing for production of furniture and utensils.

List 3: Business activities in which Thai nationals are not yet ready to compete with foreigners requiring a Foreign Business License

The following business activities are generally prohibited for foreigners. Exemptions apply however upon obtaining permission from the Director General of the DBD (note that no minimum Thai shareholding or any Thai directors shall be required).

- Rice milling and production of flour from rice and economic plants;
- Fishery only in respect of the hatching and raising of aquatic animals;
- Forestry from a grown forest;
- Production of plywood, veneer wood, chipboards or hardboards;
- Production of lime;
- Provision of accounting services;
- Provision of legal services;
- Provision of architectural services;
- Provision of engineering services;
- Construction, with the exception of:
 - Construction of structures for delivery of infrastructure public services in the sphere of public utilities or transportation requiring the use of special apparatuses, machines, technology or expertise, with the minimum capital of THB 500,000,000 or upwards from foreigners;
 - Construction of other types as prescribed in the Ministerial Regulation;
- Brokerage or agency businesses, with the exception of:
 - Being a broker or an agent in the sale or purchase of securities or in services related to futures trading of agricultural commodities or financing instruments or securities;
 - Being a broker or an agent in the sale, purchase or procurement of goods or services necessary for the production or the provision of services amongst affiliated enterprises;
 - Being a broker or an agent in the sale or purchase, procurement, distribution or acquisition of domestic and foreign markets for the distribution of domestically manufactured or imported goods, which is in character

the operation of international trade, with the minimum capital of THB 100,000,000 or upwards from foreigners;

- Being a broker or an agent of other types as prescribed in the Ministerial Regulation;

- Sale by auction, with the exception of:
 - A sale by auction which, in character, involves international bidding of items other than antiques, objects of antiquity or artistic objects that are artistic works or handicrafts or objects of antiquity of Thailand or of historical value of the country;
 - Sales by auction of other types as prescribed in the Ministerial Regulation;
- Internal trade related to traditional agricultural products or produce not yet prohibited by law;
- Retail sale of goods of all types with the total minimum capital in the amount lower than THB 100,000,000 or with the minimum capital of each store in the amount lower than THB 20,000,000;³
- Wholesale of all types with the minimum capital of each store in the amount lower than THB 100,000,000;⁴
- Advertising business;
- Hotel business, with the exception of the hotel management service;
- Guided touring;
- Sale of food and beverages;
- Cultivation, propagation or development of plant varieties; and
- Other service businesses, with the exception of service businesses as prescribed in the Ministerial Regulation.⁵

Unless an exception applies, the registered and paid-up capital shall be calculated based on the estimated expenditures for three years, but must be at least THB 3,000,000.

2.3. Application procedure for Foreign Business License

Prior to commencing business, foreign investors intending to engage in business activities identified in List 2 or List 3 of the Foreign Business Act B.E. 2542 (1999) must apply for a Foreign Business License.

These are the basic steps to obtain a Foreign Business License, which usually take four to six months:

3 Kindly note that a foreign-owned Limited Company intending to carry out retail trading activities with a registered capital of THB 100,000,000 shall not be required to apply for a Foreign Business License.

4 Kindly note that a foreign-owned Limited Company intending to carry out wholesale trading activities with a registered capital of THB 100,000,000 shall not be required to apply for a Foreign Business License.

5 In practice, this serves as a "catch-all" category for service businesses.

Step 1: Submission of application

The investor shall submit the following documents to the Ministry of Commerce:

- Official application form;
- Copy of affidavit of the company or certificate of incorporation;
- Approval stating that the applicant is qualified and does not possess prohibited characteristics under sec. 17 Foreign Business Act B.E. 2542 (1999);
- Letter of explanation concerning the details of the business;
- Letter of explanation giving the percentage of shares owed by Thais and by foreigners, and the number of shares and kind of shares that the foreigners hold;
- Map showing the company's location; and
- Power of attorney.

Kindly note that a Ministry of Commerce official may request additional documents to be submitted.

Step 2: Review of application

Upon acceptance of the application and issuance of an official receipt, the Foreign Business Committee of the Ministry of Commerce shall within 60 days review the application in detail (if deemed necessary, this period of time may be extended for another 60 days from the expiration thereof).

In its assessment of the application, the Foreign Business Committee shall consider the following factors:

- Advantageous and disadvantageous effects on national safety and security;
- Economic and social development of the country;
- Public order or good morals, national values in arts, culture, traditions and customs;
- Natural resources conservation, energy, environmental preservation, consumer protection, sizes of undertakings, employment; and
- Technology transfer, research and development.⁶

In the event of approval, the Foreign Business Committee forwards the application to the Director-General who, subject to further approval, issues the Foreign Business Licence within 15 days (subject to prescribed conditions, where applicable).

In the event of refusal, the foreigner will be notified in writing of the reasons within 30 days (for the operation of List 2 businesses) or 15 days (for the operation of List 3 businesses). The foreigner has the right to lodge an appeal against the decision to refuse permission, which must be submitted within 30 days of the date on which the applicant received the notice of refusal. Upon receipt, the Foreign Business Committee must decide on the appeal within 30 days.

2.4. Exemptions

Under the current ministerial regulations, legal framework, the following business activities do not require a Foreign Business License or Foreign Business Certificate:

- Securities business and other businesses under the law on securities and securities exchange;
- Derivatives business under the law on derivatives;
- Serving as a trustee under the law for transactions in capital markets;
- A financial institution business, relevant or essential business of a financial institution, in accordance with the Financial Institution Business Act such as commercial banking business, bank representative office service business, etc.;
- Life insurance business or insurance business;
- Asset management business;
- Regional office, representative office of foreign juristic person in international trade service;
- Service business to which a government agency under the law on budgetary procedures is a party; and
- Service business to which a state enterprise under the law on budgetary procedures is a party.

3. Investment Promotion Act

Under the Investment Promotion Act of B.E. 2520 (1977), Thai and foreign investors carrying out promoted business activities may apply with the Board of Investment (BOI) for tax and/or non-tax incentives.⁷ Successful foreign applicants can then apply with the Foreign Business Department for a Foreign Business Certificate (FBC), in which case no Foreign Business License (FBL) must be obtained, allowing the applicant to engage in business activities usually restricted/prohibited under the Foreign Business Act B.E. 2542 (1999).

⁶ This factor is widely viewed as the most important parts of the evaluation process of the Foreign Business Committee.

⁷ The Board of Investment prescribed investment promotion policies under the Investment Promotion Act No. 2 B.E. 2534, No. 3 B.E. 2544, and No. 4 B.E. 2560. For more information and updates, please refer to <https://www.boi.go.th>.

3.1. Promoted activities

Under the current policies of the Board of Investment, the following investment activities shall qualify for promotions:

- Agriculture and agricultural products;
- Chemicals, paper and plastics;
- Electronic industry and electric appliances;
- Metal products, machinery and transport equipment;
- Mining, ceramics and basic metals;
- Light industry;
- Services and public utilities; and
- Technology and innovation development.

3.2. Incentives, guarantees and protections for investors Tax incentives

The Investment Promotion Act of B.E. 2520 (1977) provides for the following tax incentives:

- Exemption from corporate income tax for a specified period;
- Exemption from/reduction of import duties on machinery;
- Reduction of import duties for raw or essential materials;
- Exemption from import duties on materials for R&D purposes;
- Exemption from import duties on raw or essential materials for production/export purposes;
- An additional 50% reduction of corporate income tax for a specified period after the original exemption period;
- Double deductions for the costs of transportation, electricity and water supply for a specified period of time; and
- An additional 25% deduction of the cost of installation or construction of facilities.

Non-tax incentives

Further, the following non-tax incentives are available:

- Permission for foreign nationals to enter Thailand for studying investment opportunities;
- Permission to bring into Thailand skilled workers and experts to work in investment promoted activities;
- Permission to own land;
- Permission to take out or remit money abroad in foreign currency; and
- Permission to have 100% foreign-ownership for certain business activities.

Guarantees

The following guarantees are available for promoted activities:

- The State will not nationalise the business activities of the promoted investor;
- The State will not undertake a new business activity in competition with the promoted investor;
- The State will not monopolise the sale of products or commodities of the same kind as, or similar to those produced or assembled by the promoted investor;
- The State will not impose price controls on products or commodities of the promoted investor;
- The State will grant promoted investors permission to export products or commodities at all times; and
- The State will not allow any government agency, government organisation or state enterprise to import the products being produced by the promoted investor on a tax-exempt basis.

Protections

Further, the following protections are available for promoted activities:

- To charge extra import fees on products similar to those produced by the promoted investor at a rate not exceeding 50% of the price of overseas insurance and freight charges, effective for a period of not more than one year;
- In cases where the Board of Investment is of the opinion that the relevant law is inadequate for protecting the business activities of the promoted investor, it may increase the measure by banning the import of products similar to the products produced by the promoted investor; and
- In cases where the promoted investor encounters any problems or obstacles in the course of carrying out the promoted activities, the Chairman of the Board of Investment will have the power to render any appropriate assistance.

A wider range of tax incentives may be available to those investors who set-up their business in designated industrial estates or zones.

3.3. Investment promotion criteria

Criteria for project approval

Under the current policies of the Board of Investment, projects submitted for promotion shall meet the following qualifications:

- The value added of the project must not be less than 20% of revenues, except for projects in agriculture and agricultural products, electronic products and parts, and coil centres, all of which must have value-added of at least 10% of revenues.
- Modern production processes must be used.
- New machinery must be used (in case of imported used machinery, the criteria for consideration will be classified into general cases, factory relocation cases and other cases).
- Projects with an investment capital of THB 10,000,000 or more (excluding cost of land and working capital) must obtain ISO 9000 or ISO 14000 certification or similar international standard certification within two years from the full operation start-up date (otherwise the corporate income tax exemption shall be reduced by one year).
- For a concession project and the privatisation of a state enterprise project, the Board of Investment's criteria shall be based on the Cabinet's decisions dated 25 May 1998 and 30 November 2004.⁸

The project must further guarantee the protection of the environment as follows:

- Adequate and efficient guidelines and measures to protect environmental quality and to reduce environmental impact must be installed (the Board of Investment will consider the location and pollution treatment of a project with potential environmental impact).
- Projects or activities of a type and size that are required to submit environmental impact assessment reports must comply with related environmental laws and regulations or Cabinet resolutions.
- Projects located in Rayong must comply with the Announcement of the Office of the Board of Investment No. Por 1/2554 dated 2 May 2011 on Industrial Promotion Policy in Rayong Province.

Finally, the project must meet the following minimum capital investment and project feasibility requirements:

The minimum capital investment requirement of each project is THB 1,000,000 (excluding cost of land and working capital) unless otherwise specified on the list of activities eligible for investment promotion that is attached to this announcement. As for knowledge-based services, the minimum capital

investment requirement is based on the minimum annual salaries expense specified in the list of activities eligible for investment promotion.

For newly established projects, the debt-to-equity ratio must not exceed 3 to 1. Expansion projects shall be considered on a case-by-case basis.

For project with an investment value over THB 750,000,000 (excluding cost of land and working capital), the project's feasibility study must be submitted with details as specified by the Board of Investment.

For a concession project and the privatisation of a state enterprise project, special criteria shall apply.⁹

Criteria for foreign shareholding

In its *Announcement No. 2/2557* (Policies and Criteria for Investment Promotion), the Board of Investment stipulates the following criteria for foreign shareholding in projects that apply for investment promotion:

- For projects in activities under List 1 annexed to the Foreign Business Act B.E. 2542 (1999), Thai nationals must hold shares totalling not less than 51% of the registered capital.
- For projects in activities under List 2 and List 3 annexed to the Foreign Business Act, B.E. 2542 (1999), there are no equity restrictions for foreign investors except as otherwise specified in other laws.

Further, the Board of Investment may set foreign shareholding limits for certain activities eligible for investment promotion as deemed appropriate.

4. Industrial Estate Authority of Thailand

The Industrial Estate Authority of Thailand (IEAT) is a government agency under the Ministry of Industry. It is responsible for the establishment and development of industrial estates, which shall attract designated industries and offer investors a number of privileges and incentives, such as modern infrastructure and administrative support. Industrial Estates are divided into General Industrial Zones (GIZ) and IEAT Free Zones.

⁸ For more information on these decisions, please refer to https://www.boi.go.th/index.php?page=criteria_for_project_approval.

⁹ For more information and updates, please refer to https://www.boi.go.th/index.php?page=criteria_for_project_approval.

4.1. General Industrial Zones

General Industrial Zones provide the following non-tax incentives:

- Right to own land in an industrial estate;
- Right to bring in foreign skilled workers, with visa and work permit facilitation (including spouses and dependents);
- Right to remit money abroad; and
- Right to receive additional privileges from Thailand's Board of Investment when applying for investment promotion.

4.2. IEAT Free Zones

IEAT Free Zones provide non-tax incentives that are similar to General Industrial Zones (please see above no. 4.1).

In addition, they offer the following tax incentives:

- Right to receive additional tax privileges;
- Right to receive exemptions of import duty; value-added tax; as well as excise tax on machinery, equipment, raw materials and supplies used in production;
- Right to receive exemptions of export duty, value-added tax, as well as excise tax on imported materials for use in production or for commercial operation;
- Right to receive exemptions of export duty, value-added tax, as well as excise tax on raw materials, products and by-products.

5. Eastern Economic Corridor

The Eastern Economic Corridor (EEC) is being developed in the eastern provinces of Rayong, Chonburi, and Chachoengsao to encourage investment into next-generation industries that use innovative and high-end technology.

The ten target industries under the Eastern Economic Corridor initiative include the following:

- Automotive;
- Electronics;
- Petrochemicals;
- Agriculture and food;
- Tourism;
- Automation and robotics;
- Aerospace;
- Digital;
- Biotechnology; and
- Medical and healthcare.

Investors may enjoy the following privileges:

- Exemption from corporate income tax for up to 15 years;
- Exemption from import duty of machinery and raw materials imported for manufacture for exporting and for research and development purposes;
- Support fund in research and development investment;
- Permission to own land for BOI promoted projects;
- Right to lease land for 50 years;
- Lower personal income tax at 17%;
- One-stop service system to facilitate investors; and
- Five years' work permit eligibility.

Please note that commercial operations must commence within three years after issuance of the investment permit. In special cases, an extension may be granted.

Luther in Asia

Expertise

Our office works closely together with the other Luther offices in Asia and Europe. We take a holistic approach, dealing with Asia-wide compliance issues, assisting with the creation of international holding structures and ensuring tax-efficient repatriation of profits.

We provide the complete range of legal and tax advice to clients doing business in and from Asia. To offer a seamless service, we have teams in Europe as well as in Asia, led by partners with many years of experience on both continents. That way, we can immediately answer questions concerning investment decisions and provide our clients with an accurate assessment of the particularities of their projects, no matter where they are located.

Our lawyers unite substantial practical knowledge in important legal areas and cover the entire spectrum of law in Asia and beyond. We support foreign investors in the assessment of location and investment criteria, the structuring of investment projects, acquisitions and joint ventures. Finding and implementing solutions for sensitive areas like technology transfer and know-how protection also form part of our work. Alongside our clients we negotiate with future partners and local authorities and ensure the enforcement of their rights, in and out of court as well as in arbitration proceedings.

The services of our lawyers are complemented by our accountants, HR professionals and tax consultants offering all the services one would necessarily associate with a “one-stop shop” concept, from outsourced administration to accounting, payroll and tax compliance. Additionally, we provide corporate secretarial services, especially in Asian “common law” countries.

Collectively, our lawyers, tax consultants and professionals combine the competence and experience necessary to comprehensively assist comprehensively on all business matters in Asia. Our tax experts advise on individual and corporate tax compliance as well as on withholding tax issues, on Double Taxation Agreements and on complex international tax structures. Our accountants and professionals carry out the time-consuming administrative tasks of accounting and payroll functions a business must undertake, allowing our clients to concentrate on growing their business.

Singapore

Singapore is a leading international trade and financial hub. As such, it serves as Asian headquarters for many international companies operating within the Asia-Pacific region.

With a staff strength of more than 90, Luther is by far the largest continental European law firm in Singapore. More than

26 lawyers from Singapore, Germany, France and other jurisdictions cover the full range of corporate and commercial legal work as well as the structuring of investments within South and South East Asia.

Our team is supported by excellent local Singaporean lawyers, notary publics, tax advisors, accountants, corporate secretaries and other professionals.

Shanghai

Shanghai is the main hub for doing business in China, and with a team of more than 20 international lawyers, Luther is the largest German-speaking law firm in the city. Our China team consists of German and Chinese legal experts most of whom have over a decade of experience in developing and entering the Chinese market.

Luther Shanghai is fully authorised to offer legal services including litigation and provides advice on all questions of Chinese law. Our legal team is supported by Chinese tax advisors, accountants, corporate secretaries and other professionals.

Region

Our two principal Asian offices in Singapore and Shanghai are complemented by offices and teams in Yangon (Myanmar), Bangkok (Thailand), Delhi-Gurugram (India), Ho Chi Minh City (Vietnam), Kuala Lumpur (Malaysia) and Jakarta (Indonesia).

This network of Luther offices is further strengthened by the long-established business relationships that we have successfully developed both locally and with our regional partners in Australia, Hong Kong, Japan, New Zealand, the Philippines and South Korea.

Hits the Mark. Luther.

Luther Rechtsanwaltsgesellschaft mbH is one of the leading corporate law firms in Germany. With some 420 lawyers and tax advisors, we can advise you in all fields of German and international corporate law. In addition to having offices in every economic centre throughout Germany, we are also present in 11 locations abroad: in Brussels, London and Luxembourg in Europe, and in Bangkok, Delhi-Gurugram, Ho Chi Minh City, Jakarta, Kuala Lumpur, Shanghai, Singapore and Yangon in Asia.

Our advisory services are tailored to our clients' corporate goals. We take a creative, dedicated approach to achieving the best possible economic outcome for each of our clients. The name "Luther" stands for expertise and commitment. With a passion for our profession, we dedicate all our efforts to solving your issues, always providing the best possible solution for our clients. Not too much and not too little – we always hit the mark.

We know how crucial it is to use resources efficiently and to plan ahead. We always have an eye on the economic impact of our advice. This is true in the case of strategic consulting as well as in legal disputes. We have complex projects on our agenda every day. At Luther, experienced and highly specialised advisors cooperate closely in order to offer our clients the best possible service. Thanks to our fast and efficient communication, permanent availability and flexibility, we are there for you whenever you need us.



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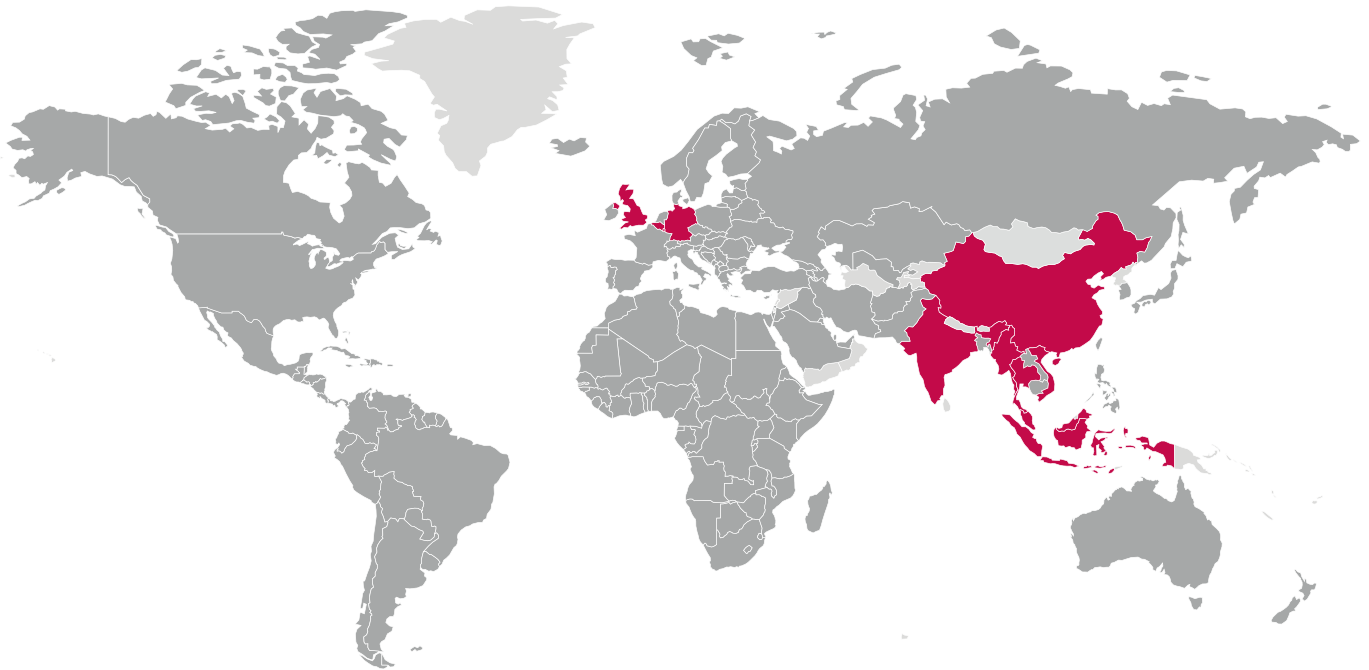
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Our locations

We have a global outlook, with international offices in 11 key economic and financial centres in Europe and Asia. We also maintain close relationships with other commercial law firms in all relevant jurisdictions. Luther is a founding member of unyer (www.unyer.com), a global organisation of leading professional services firms that cooperate exclusively with each other. This way, we ensure a seamless service for our clients throughout their demanding international projects.

Our partner firms are based in Africa, Australia and New Zealand, Europe, Israel, Japan and Korea, the Middle East, Russia and the CIS, South and Central America, the US and Canada.

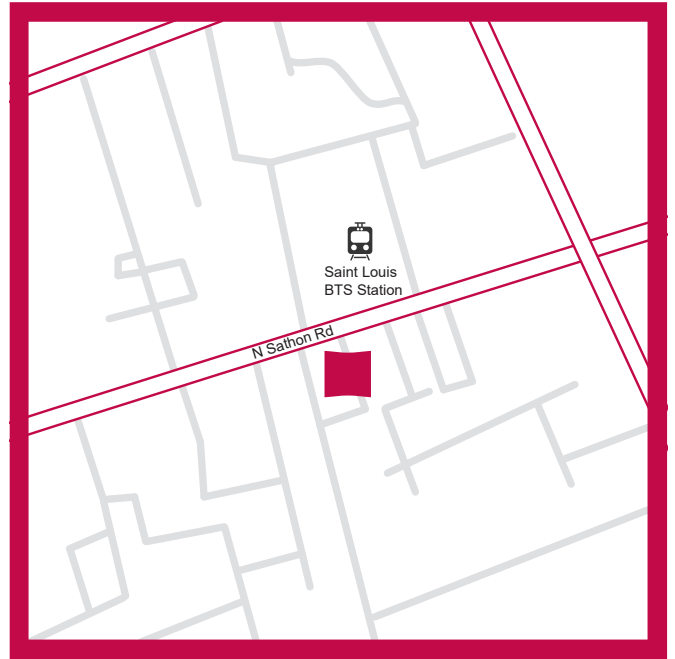
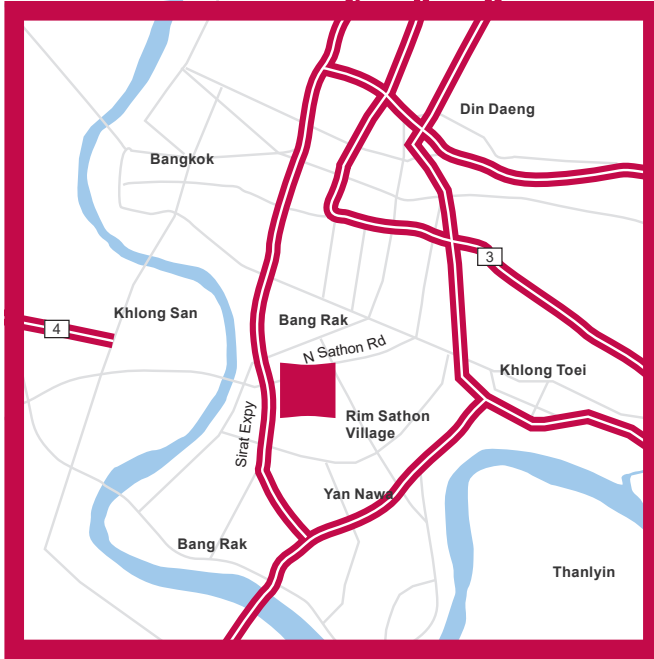


- Luther locations
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| Essen | Shanghai |
| Frankfurt a.M. | Singapore |
| Hamburg | Stuttgart |
| Hanover | Yangon |
| Ho Chi Minh City | |

Our office in Bangkok



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