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Memo: Registration of a non-profit organisation in Thailand

July 2024



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A. Introduction



In general, foreign non-profit or non-governmental organisations have to register a legal presence in Thailand to carry out their activities 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 *Working of Alien Act B.E. 2551 (2008)*.

Further, the *Rules of the Ministry of Labour and Social Welfare on the entry of foreign private organisations to operate in Thailand B.E. 2541 (1998)* and the *Rules of the Committee on consideration of the entry of foreign private organisations, governing principles for consideration and instruction on the entry of foreign private organisations to operate in Thailand and the establishment of regional offices in Thailand B.E. 2543 (2000)* stipulate requirements for foreign private organisations and foreigners wishing to apply for permission to operate in Thailand, as well providing guidelines for their operations in Thailand.

B. Types of legal structures

	Foreign private organisation	Association	Foundation
Applicable laws and rules	Working of Alien Act B.E. 2551 (2008). Rules of the Ministry of Labour and Social Welfare on the Entry of foreign private organisation to Operate in Thailand B.E. 2541 (1998) Rules of the Committee on Consideration of the Entry of foreign private organisation Governing principle for consideration and instruction on the entry of foreign private organisation to operate in Thailand and the establishment of regional office in Thailand B.E. 2543 (2000)	Thai Civil and Commercial Code B.E. 2535 (1992)	Thai Civil and Commercial Code B.E. 2535 (1992)
Authority	Foreign Workers Administration Office of the Department of Employment of the Ministry of Labour	Minister of Interior	Minister of Interior
Minimum investment requirement	N/A	N/A	THB 200,000 or THB 500,000, depending on activities
Minimum number of members	N/A	10 members for the incorporation of an association	3 members for the incorporation of a foundation
Officers	Authorised representative, depending on activities	Committee (comparable to a Board of Directors), consisting of at least 3 individuals	Committee (comparable to a Board of Directors), consisting of at least 3 individuals
Legal nature	No independent legal entity (considered as the same juristic person as the headquarter registered abroad)	Juristic person	Juristic person
Tax liability	Not subject to corporate income tax	Subject to corporate income tax (2% and 10% of gross business income before the deduction of any expenses, depending on category of income)	subject to corporate income tax (2% and 10% of gross business income before the deduction of any expenses, depending on category of income)
Term of registration/ expiry	Initially 1 year; then 2 years for each subsequent renewal	N/A	N/A
Employment of foreign staff	Yes	Yes	Yes

C. Registration of a non-profit organisation

We set out below an overview of the types of legal structures typically available for non-profit or non-governmental organisations in Thailand, namely the registration of a **foreign private organisation** or an **association** or a **foundation**.

1. Foreign private organisation

Nature of a foreign private organisation

A foreign private organisation refers to an organisation already instituted in a foreign country which aims to carry out social work or non-profit activities within Thailand. Such International Non-Governmental Organisations (INGOs) can apply with the Foreign Workers Administration Office of the Department of Employment of the Ministry of Labour for obtaining permission to operate in Thailand.

A foreign private organisation is able to act independently and to engage in legitimate activities. However, a foreign private organisation will not be treated as a separate legal entity from the overseas organisation it represents. In theory, any and all contracts it enters into and the legal obligations, debts and liabilities arising therefrom, shall be binding and enforceable against the overseas organisation.

According to the *Rules of the Committee on Consideration of the Entry of foreign private organisation Governing principle for consideration and instruction on the entry of foreign private organisation to operate in Thailand and the establishment of regional office in Thailand B.E. 2543 (2000)*, a foreign private organisation must meet the following criteria:

- Being a juristic person or being registered under the laws of another country;
- Carrying-out non-profit activities (e.g. charity work, social work) and not having any political purposes;
- Activities are not detrimental to the stability of Thailand and do not contradict public order or good moral of the people;
- Activities are not detrimental to the relations between Thailand and other countries;
- Provision of economic, social and/or academic assistance with guidelines in compliance with the development and stability policy of the Thai government;
- Sufficient financial ability for carrying-out activities in Thailand; and
- Carrying-out activities in accordance with the laws, rules and regulations of Thailand.

Permitted activities

In accordance with the *Rules of the Ministry of Labour and Social Welfare on the Entry foreign private organisation to Operate in Thailand B.E. 2541 (1998)*, a foreign private organisation that wants to operate in Thailand can apply for the following:

- Establishment of a regional office and/or operations in Thailand;
- Providing financial or other assistance (without establishing an office or operations in Thailand);
- Entering Thailand for seminars in the country; and
- Providing financial or other assistance for seminars in Thailand (without arranging seminars in Thailand).

Application process

Any foreign private organisation wishing to operate in Thailand must submit standard documents and information (e.g. certificate of registration from overseas country). Depending on the type of activities in Thailand, the submission of additional documents and information may be necessary (e.g. from the Thai partner institution).

Further information can be found under <https://www.doe.go.th/prd/ngo/knowledge/param/site/172/cat/19/sub/0/pull/category/view/cover-view>.

Right to appeal

In case an application is not successful, a foreign private organisation can appeal with the Minister of Labour within 30 days from the date of receipt of the letter notifying the refusal. The Minister of Labour shall review and decide the case within 60 days from the date of receipt of such appeal. Such decision shall then be final.

The name list of foreign private organisation which are permitted to operate in Thailand can be found under <https://www.doe.go.th/prd/ngo/>.

Length of permission

In case an application is successful, a foreign private organisation initially receives permission to operate in Thailand for one (1) year. Subsequent extensions are usually valid for a period of two (2) years each.

2. Association

Nature of an association

An association is a juristic person and may generally carry out any non-profit activities in Thailand.

Section 78 of the *Thai Civil and Commercial Code B.E. 2535 (1992)* provides the following:

“An association created for conducting any activity which, according to its nature, is to be done continuously and collectively by persons other than that of sharing profits or incomes earned, must have its regulations and must be registered according to the provisions of this Code.”

An association is a group of people working in an organisation with the same aim or interest, which focuses on the public interest, and benefits the society and its members. Associations can carry-out activities that generate profit, but such profits must be used to promote the objectives and purposes of the association. This means that they cannot be distributed to the members.

An association must have at least ten (10) members.

Each member of the association has to pay the total subscription fees on the day when he applies for membership or at the beginning of the period for payment of subscription, unless otherwise provided in the regulations of the association.

Each member is liable to the debt up to the amount of subscription. Further, each member is liable to the debt of the association for not more than the amount of the subscription due by him.

An association is represented in its relations with third persons by its committee, consisting of at least three (3) directors who must be natural persons (this can either be a Thai citizen or a foreigner) and shall manage the activities of the association under the applicable laws, the regulations of the association and under supervision of the general meetings of the members of the association. While there is no statutory requirement to appoint a director who is a resident of Thailand, for practical reasons (e.g. the signing of official documents on behalf of the association), we generally recommend that at least one (1) directors lives in Thailand.

Registration of an association

The application for registration of an association must be filed jointly in writing by at least three (3) members (which are called promoters) of the association with the registrar of the area where the principal office of the association is situated.

The following documents and information must be submitted for registering an association:

- The regulations the association (please see below);
- Minutes of the meeting of the three (3) promoters leading to the establishment;
- A list of names, addresses and occupations of ten (10) initial members;
- A list of names, addresses and occupations of at least three (3) directors;
- Proof of the location of the association’s headquarters (e.g. map, lease agreement);
- Background history check of the persons to be the directors which are certified by a department-level government official; and
- Certified copy of the identification card and house registration book of all members and directors.

The regulations of an association must have at least the following particulars:

- The name of the association (which must have the word ‘association’ incorporated);
- The objectives of the association;
- Addresses of its principal office and all its branch offices (if any);
- Rules for admission of its members and conclusion of membership;
- Rates and member fees;
- Rules for the committee of the association (e.g. number of directors, appointment of directors, term of office of directors, retirement of office of directors, meetings of the committee);
- Rules for the management of the association, the keeping of accounts and the property of the association; and
- Rules for the general meeting of the members.

There is no minimum investment required to set up an association in Thailand.

Application process

Upon submission of the application, the registrar will check whether it complies with the statutory requirements of section 79 (“Association Requirements”) and section 81 (“Registration of an association”) *Thai Civil and Commercial Code B.E. 2535 (1992)*.

If it is found that the application and regulations comply with the above, the registrar shall issue a certificate of registration to the association. The registration shall be published in the Government Gazette. If that is not the case, however, the registrar shall instruct the applicant to make corrections or alterations.

If the registrar deems that the objectives of the association are contrary to the law or good moral or likely to endanger public order or national security, or the applicant fails to make the requested corrections or alterations within 30 days from the day of which the instruction of the registrar came to his knowledge, the registrar shall refuse the registration and inform the applicant without delay. The applicant is entitled to appeal in writing against the order of refusal for registration to the Minister of Interior through the registrar within 30 days from the date of receipt of the refusal order. The Minister of Interior shall decide the appeal and inform the appellant of the decision within 30 days from the date of receipt of the written appeal by the registrar. The decision of the Minister of Interior shall be final.

Formation of an association

It usually takes approximately three (3) months to register an association.

3. Foundation

Nature of a foundation

A foundation is a juristic person and may generally carry out any legal non-profit activities in accordance with the laws of Thailand (e.g. charitable activities, which may allow for tax exemptions).

Section 110 of the *Thai Civil and Commercial Code B.E. 2535 (1992)* provides for the following:

“A foundation consists of property specially appropriated to public charity, religious, art, scientific, education or other purpose for the public benefit and not for sharing profit, and has been registered under the provisions of this Code.

“The property of a foundation must be managed for implementing the objects of that foundation, and not for seeking interest for any person.”

A foundation can enter into contracts (which means that the legal rights, but also obligations, debts and liabilities arising therefrom, shall be binding and enforceable against the foundation), raise funds and make donations. This is an advantage for organisations seeking to partner with local organisations to support their activities in Thailand.

The minimum investment requirement for a foundation is in between THB 200,000 and 500,000, depending on the type of objectives for which the foundation is being established, whereby half of the minimum required investment must be evidenced in cash (e.g. paid into a local bank account), while another part may be evidenced in the form of assets. As a foundation is set-up for non-profit purposes, none of the parties involved can benefit from its profits or donations. Foundations can accept donations from the general public and can issue tax receipts.

A foundation must have a committee, consisting of at least three (3) directors who must be natural persons (this can either be a Thai citizen or a foreigner) and shall manage the activities of the foundation according to the applicable laws and regulations of the foundation. While there is no statutory requirement to appoint a director who is a resident of Thailand, for practical reasons (e.g. the signing of official documents on behalf of the foundation), we generally recommend that at least one (1) directors lives in Thailand.

The regulations of a foundation must have at least the following particulars:

- Name of the foundation (The foundation must have the word ‘foundation’ incorporated with its name);
- Objectives of the foundation;
- Addresses of its principal office and all its branch offices (if any);
- Property at the time of registration;
- Rules for the committee of the foundation (i.e. number of the directors, appointment of the directors, term of office of the directors, retirement of office of the directors and meetings of the committee); and
- Rules for the management of the foundation, management of the property and accounts of the foundation.

Foundations may be granted corporate income tax exemption on registration and subscription fees received from members, and on money or properties received as donations or gifts. Apart from that, corporate income tax is calculated on gross income before the deduction of any expenses. The applicable tax rates are as follows:

- 2% on gross income (i.e. income from business, commerce, agriculture, industry transport, etc.); and
- 10% on any gross income (i.e. interest, dividend, capital gain, rental, commission, professional fee).

This tax rate is considerably lower compared to those imposed on companies in Thailand.

Application process

The application for registration of a foundation must be filed in writing with the registrar of the area where the principal office of the foundation is situated, and it must at least specify the owner of the property and the list of the property appropriated for the foundation together with the list of names, addresses and occupation of all the would-be directors of the foundation, including the regulations of the foundation.

Upon submission of the application, the registrar will check whether it complies with the statutory requirements of section 114 ("Applications filed with Local registrar") and under section 112 ("Regulation Requirements") of the of the *Thai Civil and Commercial Code B.E. 2535 (1992)*. If that is the case, the registrar shall issue a certificate of registration to the foundation. This shall be published in the Government Gazette.

If it is found that the application or the regulations are not in conformity with the above listed criteria, the registrar shall instruct the applicant to make corrections or alterations.

If it is considered by the registrar that the registration cannot be made because the objectives of the foundation are contrary or the law or good moral or likely to endanger public order or national security, or the applicant fails to make corrections or alterations as such within days counting from the day on which the instruction of the registrar came to his knowledge, the registrar shall give an order refusing the registration and inform the applicant without delay of the reasons for such refusal. The applicant is entitled to appeal in writing against the order of refusal for registration to the Minister of Interior through the registrar within 30 days from the date of receipt of the refusal order.

The Minister of Interior shall decide the appeal and inform the appellant of the decision within 30 days from the date of receipt of the written appeal by the registrar. The decision of the Minister of Interior shall be final.

Formation of a foundation

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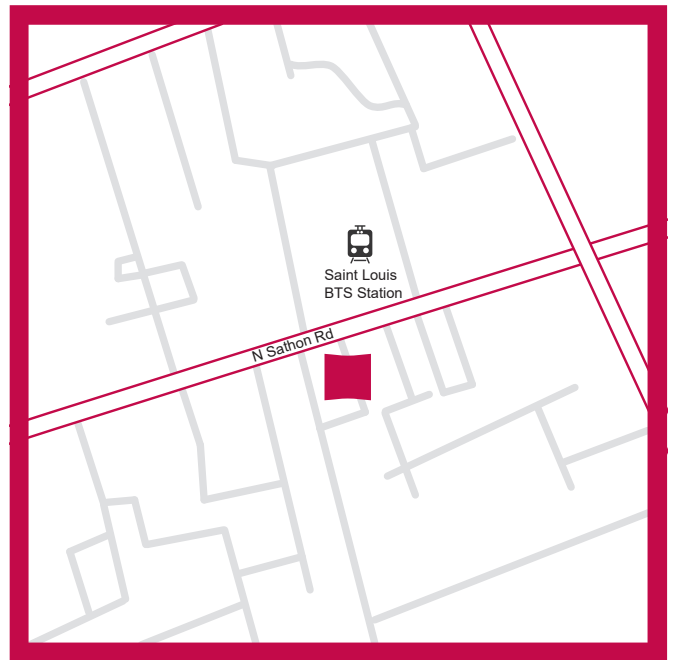
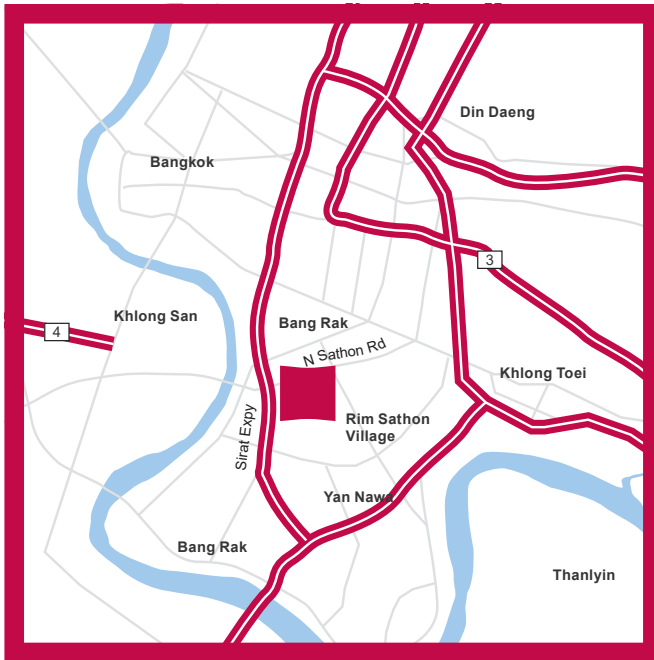
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Our and our local partners' offices in important European and Asian markets



The shown locations are either Luther legal or corporate services offices and/or offices of our local cooperation partners.

Our office in Bangkok



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For reasons of better legibility, the simultaneous use of gender-specific language forms is dispensed with.

Corresponding terms apply in principle to all genders in the sense of equal treatment. The abbreviated form of language has only editorial reasons and does not imply any valuation.

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