



RESPONDEK & FAN

LEGAL E-BULLETIN

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FORMATION OF REPRESENTATIVE OFFICES IN THAILAND

Introduction

The interest in setting up a Representative Office (“RO”) in Thailand seems to have significantly increased during the last twelve months and it is in this respect that we summarize the conditions and features of RO’s below.

To set up an RO in Thailand provides a relatively uncomplicated (albeit somewhat bureaucratic) way to investigate business and market opportunities in Thailand. The formation of an RO requires a minimal commitment from the investor, however an RO cannot carry out any income-generating activities.

It is important to note that the foreign company and the RO are considered to be the same legal entity, with the result that the foreign company is bound to third parties by the acts which an RO has conducted within the scope of authority granted to it.

Representative Office - Legal basis

The legal basis of RO’s in Thailand are

the Foreign Business Act BE 2542 (1999) where RO’s fall under List 3, No. 21 as well as Announcement No. 281 of the National Executive Council.

Permitted business activities for a Representative Office

An RO is not permitted to conduct its own business and must only carry out activities on behalf of the parent company. The RO may only engage in a certain limited number of activities as follows:

- 1) Sourcing goods and services in Thailand for the use by the parent company
- 2) Checking and controlling the quality and quantity of goods purchased or hired to be manufactured in Thailand for use by the parent company
- 3) Providing advice to Thai customers or agents about goods sold by the parent company in Thailand
- 4) Propagation of information concerning new goods or services of

Dear Reader,

The Thai government plans to further tighten the regulations of the Foreign Business Act. As a consequence, there is not only an increased interest in securing Board of Investment preferential licenses, but also in setting up alternative structures including Representative Offices. This edition of our Legal E-Bulletin features the requirements for the formation of Representative Offices in Thailand.

As usual, if you have any comments, remarks or questions, we would love to hear from you. Please contact me at +65-6324-0060 or by email: respondek@rflegal.com.

Kind regards,
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the parent company, and

- 5) Report on business movements in Thailand to the parent company.

The RO cannot issue any invoices or engage in any income generating activities. Since any sales activities are prohibited, also none of the employees of the RO can have any job titles like “Sales Manager” etc.

Application for a Representative Office License

Applications for an RO have to be submitted to the Ministry of Commerce, Department of Business Development. The following documents need to be submitted:

A) DOCUMENTS WHICH REQUIRE NOTARIZATION AND LEGALIZATION

1. **Affidavit of the parent company**, executed by the authorized manager/corporate officer containing information about the parent company’s juristic status, including name, registration number, shareholders’ structure, country of registration, articles of association and list of directors (name, address, nationality, age and race, number of shares held; information which directors have the power to bind the company);
2. **Power of Attorney**; issued by parent company in favour of the person appointed as the

Representative Office’s authorized representative in Thailand. At least one authorized representative of the RO must reside in Thailand;

3. **Confirmation from parent company with regard to the proposed salary** and other remuneration to be provided to the manager/corporate officer in charge of the operations in Thailand.

B) DOCUMENTS WHICH DON’T REQUIRE NOTARIZATION AND LEGALIZATION *(may vary depending on the activities of the RO)*

1. **Copy of passport and visa page**, or in case of a Thai national copy of the identity card of the individual who is appointed as the authorized representative of the Representative Office;
2. **Letter**, describing in detail the intended business activities of the RO and why it is being set up, including a business plan, prospective employees, and specific information (such as an office map) regarding the location of the physical location of the RO;
3. **Organization Chart**, showing the relationship between the RO and parent company and branches, including list of all affiliates/group companies and branches and their main business activities;



4. **Information brochure** about the parent company;
5. **List of current and / or proposed Thai customers** of the parent company;
6. **Copies of invoices** issued by parent company to Thai customers (if any);
7. **Annual report of the parent company**

It is important to note that all certifications must not be older than six months from the date of the submission of the RO application.

Capital requirements

Since the RO is prohibited from generating income, all of its capital must be remitted from the parent company abroad to the RO in Thailand. The general rule is that the total volume for the loan of the RO must not exceed seven times the share capital of the parent company.

In accordance with Sec. 14 of the FBA, the total capital of the RO must be an amount calculated as 25% of the annual average expenses of the first 3 years of operation of the RO, but at least three million Baht (can in some instances be higher according to the calculations undertaken by the MOC). This capital is to be remitted into Thailand as follows:

- 25% upon issuing of the Foreign Business License relating to the RO;
- A further 25% within the first year of operation, and thereafter

- 25% each year of operation until the total amount has been fully paid up .

In total 50 % must be paid up within the first year of operation. Thereafter, 25 % needs to be paid up each year until the total amount has been fully paid up.

All operating expenses of the office (salary, travelling expenses, office rental etc) can be paid out of this amount.

Alien Business Permit

An RO must obtain an Alien Business Permit under Annex C, Chapter 3 (21) of the Foreign Business Act to start its activities. This permit is valid for life or according to the intention of the parent company.

Taxation

RO's are exempt from corporate income tax, since they do not generate any revenue. However, they are required to obtain a corporate tax identification number and submit income tax returns and audited financial statements to the Revenue Department, since they must withhold income tax on salaries paid to their employees.

Timeframe for application

If all documents are prepared and ready, the registration of a Representative Office takes about 4 to 6 months from the date of submitting the application.



Annual report

The manager of the RO must prepare an annual report on the activities of the RO undertaken during the previous year and file this report with the Ministry of Commerce, as a condition to the RO being permitted to carry on its activities.

Work Permits

Once the RO has been officially established, foreign employees can also apply for visa/work permits in accordance with the following qualifications:

Up to two foreigners can be employed by an RO, in case the RO activities are *“advise or disseminating information about their company’s products or provide reports about the Thai market to their home office.”*

Up to five foreigners may qualify for a work permit who source goods and services in Thailand for the foreign company or who are responsible for quality control for such goods and services, unless the RO sources at least THB 100 million in goods and services from Thailand during the preceding year.