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Establishing a Foundation in Thailand

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By setting up a foundation in Thailand, investors and companies can directly address issues such as education, poverty alleviation, health care, and environmental conservation, thereby contributing to the sustainable development of local communities. Furthermore, a foundation can serve as a platform for engaging employees and customers in charitable activities, cultivating a culture of giving and social responsibility within the organization.

Creating a foundation in Thailand can enhance a company's corporate social responsibility profile, fostering goodwill and strengthening brand reputation among consumers and stakeholders. It may also align with a company's strategic business goals, creating a positive legacy that benefits both society and the enterprise.

However, navigating the intricate legal and administrative framework for foundations can be challenging, necessitating a thorough understanding of the regulations governing non-governmental organisations within Thailand.

This article aims to offer essential guidance on the fundamental steps and considerations required to establish a foundation in Thailand, from comprehending the necessary documentation to ensuring compliance with local laws and regulations, thereby empowering prospective foundation applicants to effectuate a significant impact in their targeted communities.

1. Foundations Under Thai Law

Thai Foundations are regulated in the Ministerial Regulations on the Registration of Foundations B.E. 2537 (1994) and in Thailand's Civil and Commercial Code (CCC), Sec. 110 – 136. Sec. 110 CCC defines a "foundation" as follows:

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

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 is a juristic person and can therefore legally enter into contracts, employ local staff and lease premises in Thailand etc.

Legally, foundations are non-profit entities established for public benefit and must register with Thai authorities to be able to operate.

2. Legal Differences Between “Foundations” and “Associations”

Under Thai law, foundations and associations are distinct legal entities with different purposes, structures, and regulations.

A foundation does not generally have members. Instead, it has a board of directors that governs its operations. Donors contribute to its funds, but they do not have membership rights.

An association on the other hand is comprised of members who share a common goal. Members have certain rights and responsibilities, including participating in decision-making processes, voting, and electing leadership.

The funding of both entities is also different. A foundation typically has an endowment or significant assets that it uses to fund its charitable activities. Its income usually comes from donations, investments, and grants. An association, however, may generate income through membership fees, events, fundraising activities, or donations. Its financial resources are often directed towards operational and service-oriented activities for its members.

The tax implications are also different. A registered foundation can offer tax benefits for donations received, as specified under Thai tax laws. An association may not necessarily provide the same tax advantages for donations, as they are primarily service-oriented and not focused on charitable funding.

3. Conditions and Requirements to Set Up a Foundation

The registration process for establishing a foundation in Thailand commences with submitting an application to the Registrar's office in the district of the foundation's business address.

In order to set up a foundation in Thailand, the initial capital required is THB 500,000 with at least THB 250,000 in cash. However, the capital requirement for a foundation whose objective is promoting social work, education, sports, religion, and for the treatment, research, and prevention of drug use patients, AIDS, or foundations established by government agencies, is THB 250,000 and with at least THB 100,000 in cash. There are additional costs for setting up the Foundation, i.e. the official registration fees and respective government fees.

To establish a foundation, founders must be able to show bank statements or documents issued by a bank confirming an amount of the funds in the foundation's bank account covering the initial capital requirements.

4. Legal Requirements to Set Up the Foundation

The requirements and documentation for establishing a foundation in Thailand¹ are as follows:

- i. Drafting the foundation's Articles of Association (**AoA**) following the requirements in the CCC (Sec. 111 to 112) and related laws and regulations;
- ii. The list of directors (minimum: three directors; Sec. 123 CCC; no nationality requirement) which contain their names, addresses and occupations;
- iii. The list of the allotted assets to the foundation and the documents promising to donate the assets to the foundation;
- iv. Minutes of the meeting convened for the establishment of the foundation following the related Thai laws and regulations where one of the objectives must be non-profit purposes and none of the parties involved can benefit from its profits or donations;
- v. The map of the foundation's principal office and branch offices;
- vi. The written consent of the landlord or owner of the building where the foundation is located (consent for using the building as the foundation's office);
- vii. Copy of a title deed and house registration of the office building;
- viii. Copy of an identification card of Thai director(s) and a passport copy(ies) of foreign director(s); and
- ix. Copy of the will or testament in case an asset was provided by a testator to the foundation.

Regarding the name of the foundation, there are special requirements for naming the foundation in Thailand² by using the word "**... of Thailand**" or similar wording as follows:

- i. It must be the only foundation or organisation who represents the whole country;
- ii. The foundation must conduct its activities throughout the entire country or carry out its work throughout the country as a representative of other foundations or organisations in the country which have similar objectives;
- iii. The foundation must have objectives and activities that are beneficial to the general public or the country;
- iv. The founders and/or directors of the foundation or organisation must have recognised and trusted knowledge, skills, and experience among society;
- v. There must be a certificate or sponsorship from Thai relevant government agencies at the department level or equivalent/above; and
- vi. The foundation must have outstanding projects/activities of at least one year in Thailand.

5. Directors of the Foundation

In respect of the foundation's directors, a minimum of three individuals are required to form the board of directors, i.e. a Director, Assistant Director, and Secretary/Treasurer. Additionally, all of them must disclose their personal assets and personal information e.g. residential addresses, educational qualifications and work experience. Each director can hold one or more positions e.g. president, vice president, secretary, treasurer and ordinary director. It is mandatory to outline the qualifications, roles and responsibilities including the terms of each position in the foundation's AoA's provisions. Moreover, the board of directors has the right to make a resolution by appointing a sub-committee to work on any specific project(s).

It should be noted that foreign nationals could also be the foundation's director(s); however, there are additional required documents/information for the registration process, e.g. the documents proving the citizenship and/or absence of criminal records of each director from the National Intelligence Agency or the Embassy of such director's home country. Furthermore, there will be an interview session conducted by the government officers for the sake of national security. After successfully conducting the interview, the foreign director must apply for a work permit and visa with the Immigration Office in order to be able to work for the foundation.

There is no specific requirement for the foundation to have any Thai directors. However, as experience shows, having at least one Thai director will significantly facilitate the process of the registration as the officers will contact such Thai director first to ask for more information/documents and the Thai director does not need to undergo the above interview session for the national security purpose.

The application forms for the foundation formation along with other required documents must be submitted at the district office where the foundation has its registered office address. After receiving the required documents, the district office's authorities will review the documents and inspect the foundation's office at the registered location. Then, they will forward the application including their report to the provincial office and to the Ministry of Interior for the official approval order. Should the foundation aim to carry out any goals that might be related to any other department of the government, the Ministry of Interior will forward the application to the related department for additional consideration.

The overall process from the registration submission with the district office until the final decision of the Ministry of Interior normally takes an estimated six months to one year depending on the internal work process of the Ministry of Interior, the district offices, and provincial offices in each province. After the Ministry of Interior approves the application, the report will be sent back to the provincial office and to the district office subsequently. The district office will notify the applicant of such approval, and upon the notification the applicant must pay the registration fee at this time.

6. Financial Reporting and Activity Reports

After the foundation has been legally set up, the foundation is required to maintain accurate financial records and is responsible for filing the annual financial record/statements. The financial statements must be audited by a certified public accountant and must reflect the foundation's income, expenses, and assets.

In addition to financial reporting, foundations must submit annual activity reports detailing the activities carried out during the year, the use of funds, and the progress made towards achieving the foundation's objectives. This report must be submitted to the Ministry of Interior or the provincial governor's office.

It should be noted that the authorities may inspect the foundation's operations at the foundation's office to ensure that the foundations are still active in their respective areas and operating their activities following their main objectives.

In order to operate the foundation smoothly and within the legal framework provided, it is recommended to indicate the financial management policy in the foundation's AoA such as the minimum amount of cash the treasurers can keep with themselves or the signing authorities for the disbursement of the funds at different amounts etc.

To properly prepare the foundation's financial statements, it should be noted that the source of income and assets of the foundation generally could be derived from several sources, for example, (i) money and assets acquired from a testament or any other juristic acts without any conditions that bind the foundation to be responsible for the debt or any other

responsibilities; (ii) money and assets acquired from donors; (iii) interest in assets; and (iv) any other profits arising from the foundation's activities.

The foundation's tax treatment is also important. The Thai Revenue Department outlines the income tax obligations of foundations in Thailand for foundations which have not been announced to be a public charity or organisation under section 47(7)(b) of the Thai Revenue Code. Foundations must calculate their corporate income tax on all revenues before deducting any expenses and submit an income tax return within 150 days from the last day of the accounting period. Taxable income includes operational revenues from activities such as rent or sales, as well as interest and dividends.

However, certain income types are exempt from corporate income tax, including member registration fees and donations received. Income from private schools established by the foundation following the private school laws and regulations is also exempt, barring income from certain commercial activities or services to third parties.

Foundations designated as charitable organisations under section 47(7)(b) of the Thai Revenue Code are exempt from corporate income tax regardless of their income type as aforementioned. The list of the selected foundations will be published by the Ministry of Finance.

Individual donors of the designated charitable foundations can deduct up to 10% of their contributions to the foundations from their taxable income. A legal entity can also deduct its donations of money or property limited to 2% of their net profits from their taxable income. Furthermore, VAT-registered companies who donate goods to the designated charitable foundations are exempt from charging VAT on those donations.

7. Dissolution of Foundations

The dissolution of a foundation can occur for various reasons such as:

- i. **Expiration of Duration:** If a foundation was established with a specific duration indicated in the foundation's AoA, it may be dissolved upon reaching that date.
- ii. **Completion of Purpose:** A foundation may be dissolved once it has fulfilled its original purpose or mission as stated in the foundation's AoA.
- iii. **Decision by the Board:** The directors of the foundation may decide to vote to dissolve the organisation according to the provisions laid down in the foundation's AoA.
- iv. **Court Order:** A court may order the dissolution of a foundation, often as a result of misconduct, fraud, or other significant issues.
- v. **Lack of Activity:** If a foundation becomes inactive for an extended period of time and cannot demonstrate ongoing charitable activities, it may be dissolved by the regulatory authorities.

In conclusion, establishing a foundation in Thailand can be a significant step towards fostering social change and community development. With careful planning and commitment to public benefit, a foundation can play a vital role in addressing societal needs and contributing to the greater good in Thailand.

Endnotes

- 1 The Department of Provincial Administration, the Ministry of Interior, Foundation and Association Operations Manual (Bangkok: Territorial Defense Volunteers Printing) 8-10. (https://ita1.dopa.go.th/ita_files/คู่มือการดำเนินงานมูลนิธิสมาคม_ch13.pdf)
- 2 Letter announcement of the Department of Cultural Promotion, The Ministry of Culture No. Sor Tor 1405/V 8052

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