

REPRESENTATIVE OFFICES THE RIGHT CHOICE FOR THOSE WHO QUALIFY

As Thai imports and exports continue to grow, more foreign corporations wish to open offices in Thailand to support their trading needs. Often, foreign corporations want a small office in Thailand that does not generate income, with the head office bearing all the expenses. In this situation, a representative office or liaison office seems to be the suitable solution. This article will provide an overview of the key issues facing representative offices, including requirements, restrictions, and conditions.

Corporations establishing a representative office in Thailand may feel that the process is relatively complicated compared with other countries. A representative office is considered a branch office of a foreign corporation and therefore is an alien under the Foreign Business Act. If the representative office wishes to engage in one or more of the permitted activities, they will be deemed as providing servicing, and the foreign corporation shall apply for an Alien Business Licence (ABL) from the Commerce Ministry in order to set up its representative office. All relevant information (company profile, product description, trading

summary, business to be conducted in Thailand, etc.) must be elaborated on the application. Notarised corporate documents from the head office abroad must be provided. Normally, it will take about eight to 10 weeks to learn the outcome of an ABL application.

A representative office will be allowed to carry out only five activities as prescribed under the regulations, and each activity must be approved by the ministry. Two activities are designed for foreign buyers: (a) sourcing of goods or services, and (b) quantity and quality control. Two others are dedicated to foreign sellers: (c) advising on product information, and (d) introducing new products. The final activity is (e) reporting business movement. A representative office shall adhere to the permitted activities as indicated in the ABL. The representative office is not allowed to do procurement orders, conduct price negotiations, or provide maintenance and repair services in Thailand. Violations will result in revocation of the ABL and penalties, as well as potential tax consequences.

Since a representative office cannot generate income, the head office offshore shall finance all its expenses. The head office shall remit cash in the form of



foreign currency from abroad to the representative office's bank account. There is a minimum requirement for such funding, which is calculated based on the estimated expenditures of operations in Thailand for the first three years or three million baht, whichever is greater. The amount increases to five million baht if the representative office hires a foreign employee.

The representative office will be required to bring in the funds for its operation per a schedule fixed by the ministry until the funds have been remitted in full.

Evidence of the minimum capital brought or remitted into Thailand shall be presented together with a calculation in Thai currency using the reference exchange rate on such date. This must be submitted to the ministry within 15 days from the date of bringing or remitting the capital into Thailand.

The key benefits of a representative office are that its income received from the head office is not subject to Thai tax, it need not earn any income, and it can maintain a small office with a limited number of local employees. Even though its income is nil, a representative office still needs to obtain a tax ID card and file audited financial statements with the ministry and the Revenue Department.

In terms of hiring foreign employees, a representative office is quite attractive. With mandatory funding of five million baht, a representative office could hire up to five expatriates. Work permits and extensions of stay for expatriates as well as their families can be carried out at the One-Stop Service Center, which can process applications within three hours.

After receiving the ABL and establishing an office, all representative offices are monitored by a team at the ministry. Besides random visits by officials or call-ins for discussions, the representative office should not ignore the two major annual reporting duties: (1) report of business results and (2) report of transfer of technology. These reports are simply questionnaires designed to check whether the representative office has been properly

operating in the past year and has made contributions to Thai industry, such as organising seminars or training programmes. In recent years, the ministry team has taken technology transfer another step by matching each representative office with a chosen Thai academic institute. The office is expected to offer some academic activities, such as guest lectures or field trips, to transfer knowledge to Thai students.

Closing a representative office is quick and simple. It involves notifying the ministry and surrendering the ABL. Closing is unlikely to be subject to a tax audit. This is convenient if a head office decides to close a representative office and establish a full business activity through a limited company.

A representative office is preferable for many foreign corporations that need to test the water before they decide to set up a full facility in Thailand, despite the restrictions and challenging legal compliance responsibilities of a representative office.

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